Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

June 17, 2022

Re: File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors

Ms. Countryman:

The Interfaith Center on Corporate Responsibility (ICCR) submits this comment in support of File No. S7-10-22: The Enhancement and Standardization of Climate-Related Disclosures for Investors (the "Proposed Rule"). We express deep gratitude for the Commission and SEC Staff's substantive work leading to this groundbreaking Proposed Rule that will drive standardized disclosures and provide investors with decision-useful climate-related financial information.

The ICCR coalition of over 300 global institutional investors currently represents more than $4 trillion in managed assets. Leveraging their equity ownership in some of the world's largest and most powerful companies, one thing that brings ICCR members together is their interest in protecting long-term value and managing the systemic risks associated with climate change by active engagement with corporate leadership. Our comments are grounded in the experience of our members as investors managing diversified portfolios, and as active stewards who play a leading role in engagement with companies on the risks associated with climate change. As a practical matter our members' experience as engaged investors often represents the best available frontline evidence as to how the proposed climate disclosure requirements are feasible for registrants to fulfill, and also the extent to which the proposed rules address (or in some cases fail to address) identified investment risks associated with registrants' climate strategies.

ICCR believes climate-related disclosures are critical for effective investment analysis and decision-making and we are therefore supportive of many components of the Proposed Rule's measures to establish a baseline of climate risk information

accessible to investors of all sizes; however, we also offer recommendations for the Proposed Rule to be strengthened to improve the consistency and comprehensiveness of the disclosures that will result from the rule. We have outlined these perspectives in the letter below but would like to highlight key aspects of our comments, which convey a unique perspective supported by our members:

- **Scope 3:** We strongly recommend that the SEC require Scope 3 emissions disclosure for all public companies, phasing in Scope 3 disclosures for smaller registrants on a longer timeframe. This information is essential both for investors and for companies that have adopted GHG emissions reduction commitments, and that are working to manage climate risk.
- **Just transition:** We recommend that the SEC modify the definitions of physical and transition risks to include potential and actual impacts on communities and a company's workforce, as well as the changing perceptions of the public, as these impacts may lead to a variety of business risks that can affect the likelihood of success of companies' climate transition plans due to the lack of just and equitable opportunities to these stakeholders in the transition.
- **Policy alignment with climate strategy**: We would also like to highlight the importance to investors of understanding the extent of corporate alignment of federal and state policy advocacy with internal corporate climate strategies, and whether companies have aligned their policy positions, and their trade association memberships with the goals of the Paris Agreement.

More About ICCR

Currently celebrating our 51st year, ICCR pioneered the use of shareholder advocacy to press companies on environmental, social, and governance issues. Our members represent faith-based investors, pension funds, asset managers, endowments, and other long-term investors working alongside a global network of NGO and business partners. Together we are committed to moving businesses towards sustainable strategies that advance the common good.[1] Our fundamental proposition as investors is that responsible and sustainable business practices -- and a strong corporate culture of ethics -- are in the long-term interest of both companies and investors.

[1] Many of ICCR's member organizations are also members of other coalitions, including the United Nations-supported Principles for Responsible Investment (PRI), whose collective assets under management total $60 trillion, and CDP which represents in excess of $100 trillion in assets under management.

ICCR's members focus investment and engagement strategies on key areas of Environmental, Social, and Governance (ESG) concern, including human rights, health equity, food and water sustainability, and the protection of our environment (including climate change). Members integrate these concerns into their investment decision-making processes. In instances where dialogue alone is unproductive, ICCR members sometimes file shareholder resolutions. Strong votes are a signal to management that change is needed. ICCR members have filed more than 490 resolutions for the 2022 proxy season. These numbers indicate the commitment of faith and values-based investors to engage in shareholder advocacy on ESG issues, and specifically, on climate change.

ICCR members engage hundreds of global corporations annually to promote more sustainable and equitable practices. Increasingly, our members advocate for these practices not just on the basis of improved risk management at the company level, but also out of concern for broader, systems-level risks. As many ICCR members and other investors are long-term, diversified shareholders that are broadly invested in the market (often called "universal owners"), their portfolios are exposed to significant financial risk from systemic, market-wide risks such as climate change and therefore, find it within their best interests to advance corporate action on ambitious climate risk mitigation strategies.

While ICCR has a rich history of engaging with companies on climate issues (our members filed the first proposal on global warming with General Electric in 1989), we would like to highlight some key trends from our engagements over the last 10 years that demonstrate both the investor demand for disclosure of climate-related information and the feasibility of corporate action on these investor demands, as indicated by withdrawals of proposals and established agreements for companies, ultimately supporting actions similar to those requested by the rule:

- Since 2012, ICCR members have filed over **250 proposals related to GHG emission disclosures or reduction targets**. During this period, nearly half of all proposals were withdrawn for agreement, demonstrating the capacity for corporate action in line with investor requests for such information and commitments. Over 40% of those withdrawals occurred during the last three proxy seasons, <u>further indicating that GHG-related disclosures and targets are becoming more accepted as common business practice</u>.

- Of these proposals, 104 specifically called for **Scope 3-related risk, disclosures, or targets**, including those on emissions associated with lending and financing activities. Similarly, half of these Scope 3-related proposals were withdrawn for agreement during this period, but more than 60% of those withdrawals occurred during the last three proxy seasons, highlighting again the momentum of corporate action and capacity to meet the investors' demands on Scope 3.
- In more recent years, ICCR members have filed 13 proposals focused on **climate transition plan** disclosures across multiple sectors, from energy to industrials to consumer discretionary. Six of these 13 proposals, nearly 50%, were withdrawn for agreement, demonstrating the increasing demand for and the feasibility of disclosure of corporate climate transition plans.

Our extensive experience in engagement with registrants in this work is reflected in these comments. Thank you for considering our input, and for the work of the Commission and Staff in proposing and finalizing this important rule. We have organized our comment in the following manner:

CROSS-CUTTING ISSUES

This section of our comments discusses a number of cross-cutting issues in the rulemaking proposal. For each of the following topics, we provide an overview of our outlook and identify areas of the proposed rule on which we will provide specific recommendations.

A. Climate change is a systemic risk to long-term diversified investors

ICCR members, along with many other market participants and regulators, recognize climate change as a systemic risk that will have significant costs to the economy, and in turn, will significantly impact portfolios of long-term diversified shareholders.

The Commodity Futures Trading Commission (CFTC) issued a report in 2020 stating that climate change could pose systemic risks to the U.S. financial system, and called for all relevant federal financial regulatory agencies to "incorporate climate-related risks into their mandates and develop a strategy for integrating these risks in their work, including into their existing monitoring and oversight functions."[2] Climate risks are often categorized as their own category of risks, but they are not independent of existing financial risks (i.e. market risk, credit risk, liquidity risk, etc.) within current market structures and market regulation. Rather, climate risks intersect these common financial risks, compounding the potential shocks to the financial system.[3]

Researchers have attempted to estimate the long-term costs associated with climate change. A study done by Swiss Re Institute in 2021 conservatively estimated the economic losses to GDP from climate change will be 11% globally by 2050 under a 2.0 degrees C warming scenario, with nearly 7% in North America (this increases to 18% and 9.5% respectively under a 3.2 degrees C warming scenario).[4] To put these figures in context, global economic losses from the 2008 Great Recession were nearly 4%.[5]

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[2] Commodity Futures Trading Commission, "Managing Climate Risk in the U.S. Financial System," September 2020, pg 49.

[3] See Figure 2: Federal Reserve Bank of Chicago, "A New Framework for Assessing Climate Change Risk in Financial Markets," November 2020.

[4] https://www.swissre.com/dam/jcr:e73ee7c3-7f83-4c17-a2b8-8ef23a8d3312/swiss-re-institute-expertise-publication-economics-of-climate-change.pdf , Pg 2

[5] https://www.washingtonpost.com/business/economy/a-guide-to-the-financial-crisis--10-years-later/2018/09/10/114b76ba-af10-11e8-a20b-5f4f84429666_story.html

This is a major concern to diversified shareholders, or "universal owners," because there is a linear relationship between GDP performance and diversified portfolio returns over the long term,[6] meaning the expected economic losses from climate change and other systemic risks will have a significant negative impact on the long-term returns of their portfolios. As universal owners are broadly invested in the market, they are exposed to the systemic market risks driven by climate change, which cannot be effectively mitigated through traditional portfolio management approaches to reduce idiosyncratic risk. For example, a diversified investor whose portfolio selection criteria prioritizes companies that have set ambitious GHG emissions reduction targets and demonstrate sound climate risk oversight as a means to reduce security- and portfolio-level climate risks is still highly exposed to the systemic risks from climate change driven by high-emitting activities of companies outside of its own holdings. Many ICCR members identify as universal owners and/or view climate change as a systemic threat to the long-term value of their portfolios.

In the aforementioned CFTC report, the agency noted that public, consistent, and comparable disclosures will be a critical tool to overcome today's barriers to understanding, measuring, and managing these complex climate-related financial risks and that the existing voluntary disclosure regime has not resulted in disclosures of a scope, breadth, and quality to be sufficiently useful to market participants and regulators.[7] The SEC's proposed rule is a significant and comprehensive first step to addressing this gap in essential information available to investors to enable them and other market participants to address the systemic risks and associated financial costs of climate change.

B. TCFD: An important but insufficient foundation for SEC climate disclosure regime: relationship to scenario analysis, materiality, and just transition

The proposed climate disclosure rule is significantly grounded on the foundation of the 11 recommendations of the Financial Stability Board's Task Force on Climate-Related Financial Disclosures (TCFD). As we noted in our previous comments of June 14, 2021, responding to the Commission's request for input on climate disclosure, we view the TCFD's recommendations as a credible reference that is

[6] https://www.unepfi.org/fileadmin/documents/universal_ownership_full.pdf (see appendix IV)

[7] Commodity Futures Trading Commission, "Managing Climate Risk in the U.S. Financial System," September 2020, pg iv-v.

helpful to provide a shell, or structure, into which meaningful information may be provided depending on the Commission's guidance on the breadth of scope and details expected to be disclosed by issuers.

TCFD includes requests for narrative disclosure on governance, strategy, and risk management for instance, as well as metrics and targets used to assess and manage relevant climate-related risks and opportunities. We note the following areas, first where TCFD is stronger than the Commission's recommendations, and secondly, where TCFD is inadequate to address the needs of US investors.

The proposed rule omits an important TCFD recommendation: Requiring a 2° C or better Scenario Analysis. We observe that in one notable sense, the SEC recommendation for risk-management disclosures is weaker than the TCFD recommendation. TCFD requires companies to weigh their risks against a 2°C or better scenario. In contrast, the proposed SEC rule, section 229.1502(f), does not require that a company consider *any particular scenario* in its report on risk management, but only that it discloses what scenarios it utilizes. Thus, TCFD went further than the proposed SEC rule to recognize the need for company behavior to be benchmarked against the urgency of the world's response to the current global climate crisis and policy consensus as embodied in the Paris agreement and IPCC reports by requiring assessment of a 2°C or better scenario.

TCFD is not fit *for purpose* in the US market: Materiality and Scope 3 Emissions disclosure. Notably, the Rulemaking proposal follows TCFD requirements for disclosure of Scope 1 and 2 GHG emissions and seeking disclosure of Scope 3 when those emissions are deemed material. As we will discuss at greater length in a separate section below, we believe the adoption of "the Scope 3 when material" framework of TCFD is ultimately a wasteful and unnecessary distinction, and that the TCFD adoption of materiality in this context gave inadequate consideration to the unique circumstances of US legal frameworks, under which longer-term impacts may not be consistently deemed material by US companies. We note in particular that TCFD "cautions organizations against prematurely concluding that climate-related risks and opportunities are not material based on perceptions of the longer-term nature of some climate-related risks." This caution is particularly apropos to Scope 3 emissions considerations, as we discuss below. Therefore, we recommend that Scope 3 disclosures be mandatory for all registrants, not grounded in company-by-company materiality determinations.

TCFD guidelines neglected *just transition:* "Just transition" is a concept increasingly used by the investor community to refer to the manner in which a company's climate-related transition activities will impact its workforce, communities, indigenous peoples, and other stakeholders. The issues regarding job quality and access, disproportionate pollution, affordable energy and services among other impacts have a direct bearing on the company's reputation and social license. Failure to heed issues of fairness to workers and communities affected by transition plans may lead to significant social resistance to the rapid transition needed to meet the demands of climate change. Costly delays in the implementation of transition strategies, or the turnover of workers associated with failing to provide a bridge for fossil fuel sector workers to quality jobs, can have a bearing on the future value of the company.

At the same time, just transition issues are also important to many investors because it has become clear that externalizing impacts – treating workers or communities as disposable resources, or simply an opposition to be overpowered, ultimately is costly to society and creates systemic risks that have a negative societal impact, and which in turn create portfolio-wide risks for diversified investors. Thus, we conclude that the failure to include these issues in TCFD and in the proposed rule is out of step with the needs of investors both for assessment of enterprise value *and* to assess society-wide impacts. We recommend that the SEC revise the rulemaking proposal in the risk management, targets, and transition plans provisions to enable and encourage companies to identify the risks and responsive measures included in transition strategies to address issues of *just* transition.

C. Congruency analysis and greenwashing prevention

The proposed rule provides an important baseline of disclosure for investors and the SEC for *accountability* of company disclosures and claims regarding climate practices, and we believe the proposed rule must be read and assessed against the prohibitions on materially misleading statements or omissions. Omissions of critical facts may rise to the level of decision-useful, materially misleading omissions of facts under the anti-fraud provisions of rules 10b-5 or 14a-9, (relating respectively to all investor communications and to proxy-related communications). These rules prohibit both untrue statements of material facts and also to "omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

The rule encourages a company to disclose its climate strategy to demonstrate how it intends to fulfill its climate commitments such as any commitment to achieving net-zero on a particular timeline. The anti-fraud provisions could become relevant where an aggressive climate action plan is described in a disclosure but fails to disclose inconsistent lobbying policies, or where the registrant's 2050 net-zero commitment is accompanied by near-term actions inconsistent with implementation or fails to disclose deceptive carbon accounting schemas used to arrive at a net-zero calculation.

Although we advocate in these comments that the SEC provide additional line item or narrative disclosures on climate lobbying and just transition, in the absence of the SEC line items on those issues, our experience demonstrates that these issues will nevertheless arise for investors and SEC enforcement personnel as inconsistencies or incongruencies from company disclosures.

As such, the Commission's Release accompanying a final rule should provide additional guidance that makes it clear that when companies describe their climate strategy and risks, they should include such additional disclosures as needed to ensure that their statements are not materially misleading. In particular, the Commission Release could describe hypothetical situations in which disclosure of lobbying-related information would likely be necessary in order to make the disclosures on risk or strategy not misleading — for instance, where a firm is a member of a trade association that supports climate policies inconsistent with the firm's own commitment to the Paris climate agreement goals. Investors should also be encouraged to report significant incongruities to the SEC, and to file shareholder proposals as necessary, to highlight these incongruities to board and management.

D. Accommodations

The proposed rule contains numerous provisions to ease corporate implementation, including deferred implementation of Scope 3 disclosures, safe harbors, deferred implementation by smaller registrants and various other provisions. We support the initial presence of accommodations but believe that as a general principle these should be phased out within a reasonable timeframe to better match the needs of investors for consistent and reliable disclosures.

SCOPE 3 EMISSIONS DISCLOSURE

> 98. Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed? Should we instead require the disclosure of Scope 3 emissions for all registrants, regardless of materiality? Should we use a quantitative threshold, such as a percentage of total GHG emissions (e.g., 25%, 40%, 50%) to require the disclosure of Scope 3 emissions? If so, is there any data supporting the use of a particular percentage threshold? Should we require registrants in particular industries, for which Scope 3 emissions are a high percentage of total GHG emissions, to disclose Scope 3 emissions?

As we will discuss below, conditioning disclosure of Scope 3 emissions on a materiality assessment by companies is highly problematic, because it conditions disclosure on judicial interpretations of materiality which have been demonstrated to diverge significantly from actual market conditions and institutional investor needs. That is why we strongly recommend that the SEC simply require Scope 3 emissions disclosure for all public companies, phasing in Scope 3 disclosures for smaller registrants on a longer timeframe.

A. The need and feasibility of Scope 3 disclosures and targets in a wide array of sectors

Measurement of Scope 3 emissions is central to corporate responses to climate change. According to CDP, "supply-chain emissions alone from companies in its environmental-disclosure database were on average 11.4 times as much as operational emissions."[8] It has been calculated that Scope 1 and 2 emissions, or "operational emissions," represent only a fifth to a fourth of oil and gas industry emissions.[9] Companies should report their Scope 3 emissions to ensure that proper measures are being taken to reduce their overall footprint, and in fact, many have: as of 2017, over 2,800 companies that reported to the CDP reported their Scope 3 emissions.[10]

Investors are already using Scope 3 data to enhance their view of where carbon-transition risks lie across their portfolios, and to meet their own portfolio

[8] https://www.wsj.com/articles/climate-disclosure-poses-thorny-questions-for-sec-as-rules-weighed-11645180200?mod=djemMoneyBeat_us

[9] https://www.responsible-investor.com/carving-the-right-curve-to-net-zero-2050-economic-efficiency-vs-impact-sufficiency/

[10] https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf

decarbonization goals; however, many are relying on third-party data providers that use their own modeling methodologies to estimate the Scope 3 emissions in lieu of consistent and transparent disclosures. Such data providers include firms like MSCI, S&P Global, Clarity AI, and CDP, among many others. These datasets are very costly to investors, which creates barriers to access of Scope 3 information, especially for small- and medium-sized investment firms.

Currently, investors interested in sustainability, systemic risk, and long-term value creation have been working around the failure of the courts to address the gap between judicial materiality determinations and information demanded by institutional investors. To invest consistent with their strategies and beneficiary demands, many asset owners and managers, including ICCR members, have done so by seeking GHG disclosure through engagement and shareholder proposals.

Our members' experience engaging with a wide array of companies has demonstrated that the assessment of materiality proposed regarding Scope 3 emissions would be unnecessary and that instead, the final rule should require all large registrants, and preferably all registrants, to file disclosure of Scope 3 emissions reports. Our experience suggests that companies in a wide array of sectors can and should be expected to calculate Scope 3 emissions and disclose their findings.

Shareholder engagement has been a critical factor in encouraging companies to step up their Scope 3 monitoring and targets. It is clear that there is a groundswell of investor demand for Scope 3 emissions across a wide array of sectors. Consider developments of the last two proxy seasons.

For example, a 2022 proposal at Boeing Inc. focused on encouraging the company to address an aspect of the Climate Action 100+ Net Zero Benchmark (Benchmark) calling on companies to develop targets and a plan to reduce their Scope 1-3 GHG emissions to net zero, improve climate governance, and provide specific climate-related financial disclosures. The Climate Action 100+ initiative is a coalition of more than 617 investors with over $55 trillion in assets. The 2022 proposal at Boeing focused on a single indicator of the benchmark, Indicator 1 titled "Net Zero GHG emissions by 2050 (or sooner) ambition" (Net Zero Indicator), which seeks disclosure on whether the company has set an ambition to achieve net-zero GHG emissions by 2050 and whether such ambition explicitly includes scopes 1, 2, and relevant scope 3 (including product) emissions. In an unusual move, Boeing did not oppose the shareholder proposal but instead supported it. The vote in favor of the

proposal was one of overwhelming support with 91.4 % of voting shareholders supporting it. In expressing support for the proposal, Boeing noted that "We consider climate change to be an urgent issue and we are devoting significant resources in support of net-zero emissions in Boeing operations and for our industry. We have previously demonstrated our commitment to transparency in climate disclosures, and we urge shareholders to support this proposal in furtherance of our efforts. Boeing is actively developing low-carbon transition plans to meet long-term goals with meaningful milestones, and we look forward to continuing to implement the proposal's objectives by being transparent with our stakeholders on our progress toward these goals."

Despite ConocoPhillips' attempt to exclude a proposal based on ordinary business through the no-action process in 2021, Staff was unable to concur with the company's no-action request. The proposal requested that the company address the risks and opportunities presented by the global transition towards a lower emissions energy system by setting emission reduction targets covering the GHG emissions of the company's operations as well as their energy products (Scope 1, 2, and 3). The proposal garnered 59.32% support from shareholders.

The need for Scope 3 disclosures and targets is not limited to heavy industry. For instance, a proposal at Costco Inc. in 2022 garnered 69.2% investor support. The proposal 'directly requested that the company set targets that include emissions from its full value chain and that are aligned with achieving net-zero emissions by 2050 or sooner.'

For the financial sector, Scope 3 emissions represent the vast majority of the greenhouse gas footprint, particularly financed emissions. As one example, a proposal at J.P. Morgan Chase & Co. asked the company to report if and how it intends to reduce the GHG emissions associated with its lending activities in alignment with the Paris Agreement's goal of maintaining global temperature rise below 1.5°C. The proposal requested that the company report, at board and management's discretion, any actions JPMorgan is taking to measure and disclose its full carbon footprint (Scope 1-3 emissions, including financed emissions) and whether the bank is considering setting targets, and on what timeline, to reduce the carbon footprint of its lending activities. The 2020 proposal garnered 49.6% support from investors.

Best practices in the market demonstrate the current feasibility and practicality of Scope 3 calculations. Walmart, for example, reported on Scope 3 emissions for 2020.

Despite some data gaps, Walmart "figured out its suppliers' emissions by taking the data reported by 228 [of 1,200 total suppliers] and scaling up. Walmart "recognizes such estimates rely on broad assumptions," a spokeswoman said. 'The company is working with suppliers… and others to improve the availability and quality of supply-chain emissions data.'"[11] Walmart as a large market participant is incentivizing suppliers to provide Scope 1 and 2 data. As Walmart incentives their suppliers to begin reporting their scope 1 and 2 emissions, this is expected to drive an increase in data quality across the economy.

Danone has also used the GHG Protocol to calculate its Scope 3 emissions. The company used an entity-based organization approach, and performed calculations "by applying to each reporting entity's activity data the emission factors from life-cycle analysis databases (Ecoinvent), professional federations (Plastics Europe, FEFCO, FEVE), the Food and Agriculture Organization of the United Nations (FAO), suppliers that have measured their products, and measures recorded as part of the deployment of Cool Farm tool."[12] The Cool Farm tool was developed as a measurement system for sustainable agriculture and is particularly important because it exemplifies how Scope 3 calculations are being calculated on a sector-by-sector basis, which increases ease of methodology, data transparency, and sector-specific guidance.[13] Danone also used an independent third party to confirm that the carbon accounting guidelines they developed were consistent with the GHG Protocol[14].

These examples demonstrate clear investor support and feasibility of Scope 3 emissions measurement and targets. However, it is an unrealistic and inefficient approach to expect shareholder proposals to be filed at every company in order to bring the market up to a modicum of consistent Scope 3 reporting or to rely on market leaders like Walmart and Danone to drive orderly and efficient market adoption of Scope 3 emissions disclosures. Instead, we strongly support the need for an efficient and consistent baseline of reporting of Scope 1-3 reporting by all public companies.

[11] https://www.wsj.com/articles/climate-disclosure-poses-thorny-questions-for-sec-as-rules-weighed-11645180200?mod=djemMoneyBeat_us

[12] https://integrated-annual-report-2020.danone.com/wp-content/uploads/2020-Danone-Methodology-Note.pdf

[13] https://integrated-annual-report-2020.danone.com/wp-content/uploads/2020-Danone-Methodology-Note.pdf

[14] https://integrated-annual-report-2020.danone.com/wp-content/uploads/2020-Danone-Methodology-Note.pdf

B. Institutional investors seek Scope 3 data but materiality determinations of companies and the courts will not produce consistent and comparable disclosure

The question of whether Scope 3 emissions are material at a particular company begs the question: Does the interest of asset owners and managers in establishing net-zero portfolios, with the need for the necessary data to support that, provide evidence of materiality? While this seems self-evident, in the absence of Commission guidance, case-by-case materiality in the courts may not consistently recognize this demand. Despite the massive market effort underway to manage climate risk and establish net-zero portfolios, registrants' materiality determinations might deviate from recognizing the demand. **Therefore, the Commission should clarify in the release that the well-organized efforts of asset owners and managers to manage the climate risk of portfolio companies and to establish net-zero portfolios, as well as evidence from shareholder engagement and voting at a company and its peers, are relevant evidence for determination of materiality of Scope 3 emissions.**

A review of recent judicial rulings and legal scholarship on materiality supports the conclusion that the Commission should not condition required disclosures on company-by-company materiality determinations. Doing so will generate unnecessary expenses, uncertainty, and inconsistent disclosures. This is not because these issues are irrelevant or immaterial to investors, but rather due to the slow evolution of judicial doctrines under which materiality determinations do not consistently reflect the demands of the investment marketplace for information. The proposed rule would offer issuers a loophole through which many registrants could assert the narrowest interpretations of materiality. Under the proposed rule, for many companies, Scope 3 disclosures will essentially be voluntary. As noted in the comment letter of Attorney Sanford Lewis of June 16, 2022, judicial interpretations of the information that a "reasonable investor" would find to be important to their decision-making are based on consideration of a hypothetical retail investor, rather than the real-world needs and demands of institutional investors for climate change-related information. Thus, despite institutional investor demand for Scope 3 emissions disclosure, judicial determinations of materiality are most likely to only evolve slowly to recognize the materiality of climate change-related concerns. This means that conditioning disclosure on company determinations of materiality is likely to significantly lag behind investor demand for the disclosures.

No doubt, litigation associated with misleading statements or omissions associated with a proxy vote (Rule 14a-9) may help to drive eventual materiality determinations. *See United Paperworkers Int'l Union v. Int'l Paper Co.*, 985 F.2d 1190 (2d Cir. 1993) (holding that a company's representations that it had a "longstanding commitment" to protecting the environment and was a "leader" in environmental protection were material to investors because they "conveyed an impression that was entirely false," as the company failed to disclose the full extent of its environmental liabilities)." Various other legal theories, such as the fiduciary and trusteeship responsibilities of investment managers to take account of intergenerational equity consistent with their duty of impartiality as between short-term and longer-term retirees, are also likely to help drive determinations of the materiality of climate change risks.

In the meantime, failing to establish a bright-line requirement for Scope 3 disclosures would be a wasteful and inefficient use of corporate and investor resources, deferring the inevitable need for consistent and comparable Scope 3 disclosures until the courts work through these issues.

C. In the absence of establishing Scope 3 disclosure requirements for all public companies, the SEC can provide guidance to clarify when Scope 3 disclosures are likely to be material

In the event that the Commission chooses not to adopt our recommendation, and to therefore keep the Scope 3 requirement as conditioned on materiality or on whether the company has set Scope 3 targets, we recommend that either through guidance or changes to the rule, expectations be made clear regarding sectors and circumstances in which the Commission would view Scope 3 emissions as likely to be material. There are numerous baseline criteria that could be deployed in such a clarification.

i. Using Percentages of GHG footprint

Clarifying a baseline percentage as one guideline for presumptive materiality would be appropriate. This might, for instance, involve using the SBTi threshold in which any company with over 40% of their GHG footprint occurring as Scope 3 is expected to measure and set targets for such emissions. Yet, the appropriate approach would be to use that figure as presumptive materiality, but also leave room for qualitative determinations of materiality, i.e., even if the emissions are less than 40% of the company's GHG footprint, they could be material for other reasons.

This is consistent with other practices of the Securities and Exchange Commission. Staff Accounting Bulletin 99 is a guidance that takes a similar approach. The Bulletin notes:

> The use of a percentage as a numerical threshold, such as 5%, may provide the basis for a preliminary assumption that -- without considering all relevant circumstances -- a deviation of less than the specified percentage with respect to a particular item on the registrant's financial statements is unlikely to be material. The staff has no objection to such a "rule of thumb" as an initial step in assessing materiality. But quantifying, in percentage terms, the magnitude of a misstatement is only the beginning of an analysis of materiality; it cannot appropriately be used as a substitute for a full analysis of all relevant considerations. Materiality concerns the significance of an item to users of a registrant's financial statements. A matter is "material" if there is a substantial likelihood that a reasonable person would consider it important.

ii. Specifying Sectoral Guidance

It is evident that Scope 3 emissions are of overwhelming relevance to a number of sectors, including the energy, utilities, materials, automotive, capital goods, transportation, food and beverage, tobacco, and banking sectors. A good resource for documentation of the obvious materiality of Scope 3 emissions to these sectors is the MSCI net-zero tracker,[15] a quarterly gauge of progress by the world's public companies toward curbing climate risk. The report notes that the goal of reducing the risks of climate change is spurring investors, companies, financial intermediaries, and policymakers across the world to sharpen their focus on efforts by companies to drive their greenhouse gas emissions down to net-zero. Investors are monitoring whether companies have credible plans to reduce their carbon footprint, and tracking the alignment of their portfolios with the Paris Agreement, which aims to limit global temperature rise to well below 2 degrees Celsius (2°C) by the end of the century. The report by MSCI should not be taken as evidence that a disclosure rule is not needed. The reliability of MSCI's analysis is limited given the current state of comparability and verification of voluntary company reporting mechanisms. As investors demand this information, in the absence of regulatory

[15] https://www.msci.com/documents/1296102/26195050/MSCI-Net-Zero-Tracker.pdf

oversight, the incentives to minimize reported emissions and to exaggerate progress toward net-zero goals will accelerate.

Estimation and Data Sources

106. Should we require a registrant that is required to disclose its Scope 3 emissions to describe the data sources used to calculate the Scope 3 emissions, as proposed? Should we require the proposed description to include the use of: (i) emissions reported by parties in the registrant's value chain, and whether such reports were verified or unverified; (ii) data concerning specific activities, as reported by parties in the registrant's value chain; and (iii) data derived from economic studies, published databases, government statistics, industry associations, or other third-party sources outside of a registrant's value chain, including industry averages of emissions, activities, or economic data, as proposed? Are there other sources of data for Scope 3 emissions the use of which we should specifically require to be disclosed? For purposes of our disclosure requirement, should we exclude or prohibit the use of any of the proposed specified data sources when calculating Scope 3
emissions and, if so, which ones?

131. Should we permit a registrant to present its Scope 3 emissions in terms of a range as long as it discloses its reasons for using the range and the underlying assumptions, as proposed? Should we place limits or other parameters regarding the use of a range and, if so, what should those limits or parameters be? For example, should we require a range to be no larger than a certain size? What other conditions or guidance should we provide to help ensure that a range, if used, is not overly broad and is otherwise reasonable?

G. Coping with data limits and uncertainties

Much has been made of the idea that Scope 3 emissions measurement or calculation is more of a frontier than measuring or calculating Scope 1 or Scope 2 emissions. However, the available evidence demonstrates that there are adequate methodologies for calculating Scope 3 emissions, and for recognizing and estimating uncertainties associated with the calculations. Because the science of calculating Scope 3 emissions will continue to evolve, it is reasonable for the Commission to allow appropriate disclosure of estimation methods, and for practices of reporting to be expected to evolve consistent with refinements through organized efforts such as

the Partnership for Carbon Accounting Financials (PCAF) and the U.N. Net Zero Asset Owner Alliance.

The GHG Protocol notes that *any time* GHG emissions are quantified there will be some estimation uncertainty,[16] and that it is appropriate to calculate and disclose the level of uncertainty associated with Scope 3 and even Scope 1 and 2 emissions.

The fact that Scope 3 calculations are commonly based on assumptions and data of variable reliability means that as the data is requested, companies should be encouraged to use reliability scores based on the state of available data. Such characterizations are readily available and appropriate for companies to include in their disclosures. For example, PCAF (2020) assigns different reliability scores to different types of data, as follows:

- Score 1 (highest): Audited emissions data or actual primary energy data.
- Score 2: Non-audited emissions data, or other primary data.
- Score 3: Averaged data that is peer/(sub)-sector-specific.
- Score 4: Proxy data based on region of country.
- Score 5 (lowest): Estimated data with limited support.

Such disclosures may help alleviate the sense that Scope 3 disclosures required by the rule are imposing an impossible demand for precision measurements. Scope 3 frameworks have included pillars for understanding and anticipating emission uncertainty: for example, the Global Oil and Gas Industry Association for Environmental and Social Issues (IPIECA) framework for calculating oil and gas supply chain emissions recite their four pillars of comparability, consistency, certainty, and confidence. When assessing data uncertainty factors, analysis allows for further comparability between entities and data sources; consistency maintains that calculations should be based on science-based estimation and measurement methods; certainty provides an estimate for the range of uncertainty, and confidence will ensure that estimated emissions are reliable.[17] Further, the GHG Protocol outlines relevance, completeness, consistency, transparency, and accuracy as their pillars for ensuring good data management.[18] To ensure good data practice in calculating Scope 3 emissions, companies should first note when significant

[16] GHG Protocol, Revised 2020 Page 57

[17] https://www.ipieca.org/resources/good-practice/addressing-uncertainty-in-oil-and-natural-gas-industry-greenhouse-gas-inventories-technical-considerations-and-calculation-methods/

[18] https://ghgprotocol.org/sites/default/files/standards/Corporate-Value-Chain-Accounting-Reporing-Standard_041613_2.pdf

changes to the company occur, such as mergers, acquisitions, or outsourcing, as these changes may affect the selected categories and activities in their Scope 3 inventory.[19]

Analysts have noted that uncertainties associated with GHG emission inventories are generally the result of three error categories:

- Spurious errors, which may be due to incomplete or unclear data, or data that result from human error or machine malfunction.
- Systematic errors, which may be due to the methods (or models) used to quantify emissions for the process under consideration. Uncertainties due to models or equations are related to the proper application of estimation methodologies to the respective source categories.
- Random errors, which may be due to natural variability of the process that produces the emissions.[20]

Spurious errors, systematic errors, and random errors all contribute to data uncertainty. These errors may stem from individual measurements or input variables: incomplete, unclear, or faulty definition of emission sources, incorrect methods, and natural variability may all have a role to play in these errors.[21]

Reporting Scope 3 emissions with a range of values makes sense to accommodate the evolving level of reliability of the numbers and will help investors understand the quality of the company's Scope 3 measurement and management of these issues.

Given the scale and pace of activity on decarbonization necessary and occurring throughout the economy, it is clear that the state of knowledge, field-testing and calculation throughout supply chains will advance rapidly, such that the proposed requirement to provide updated reports annually is appropriate.

H. Scope 3 emissions disclosures – Require for all emissions reduction commitments

99. Should we require a registrant that has made a GHG emissions reduction

[19] https://www.api.org/~/media/Files/EHS/climate-change/Scope-3-emissions-reporting-guidance-2016.pdf
[20] https://www3.epa.gov/ttnchie1/conference/ei19/session3/shires.pdf
[21] https://www.ipieca.org/resources/good-practice/addressing-uncertainty-in-oil-and-natural-gas-industry-greenhouse-gas-inventories-technical-considerations-and-calculation-methods/

commitment that includes Scope 3 emissions to disclose its Scope 3 emissions, as proposed? Should we instead require registrants that have made any GHG emissions reduction commitments, even if those commitments do not extend to Scope 3, to disclose their Scope 3 emissions? Should we only require Scope 3 emissions disclosure if a registrant has made a GHG emissions reduction commitment that includes Scope 3 emissions?

The proposed rule requires Scope 3 emissions disclosure if the issuer has set Scope 3 targets. We agree that it is appropriate to require emissions disclosures to be able to assess progress toward such targets.

However, we also agree that a company that has made a commitment to ANY GHG emissions reductions, regardless of whether they have committed to Scope 3 reductions, should be required to disclose their Scope 3 emissions. Our rationale for this broader approach is that it is predictable that in the absence of disclosure of Scope 3 emissions, a company may burnish its GHG footprint by outsourcing activities that would merely shift emissions from Scope 1 to Scope 3, without actually generating bona fide reductions in GHGs. The company's apparent progress in reducing emissions would be illusory and materially misleading from the perspective of many investors who are seeking impact as well as risk management. Therefore, any commitment to GHG reduction must be accompanied by disclosure of Scope 3 emissions for the sake of completeness and to avoid the potential for deception.

I. Safe Harbor for Scope 3 Emissions

133. Should we provide a safe harbor for Scope 3 emissions disclosure, as proposed? … Should the safe harbor apply indefinitely, or should we include a sunset provision that would eliminate the safe harbor some number of years, (e.g., five years) after the effective date or applicable compliance date of the rules? Should the safe harbor sunset after certain conditions are satisfied?

We do not believe that a safe harbor is necessary given the other recommendations for disclosure of uncertainty, and range of calculation that we believe can be included in Scope 3 disclosures. Nevertheless, if the Commission decides to include a safe harbor for Scope 3 emissions disclosures, we recommend that it be sunsetted after three years.

OFFSETS

A. Disclose GHG emissions without deducting any offsets

> 101. Should we require a registrant to exclude any use of purchased or generated offsets when disclosing its Scope 1, Scope 2, and Scope 3 emissions, as proposed? Should we require a registrant to disclose both a total amount with, and a total amount without, the use of offsets for each scope of emissions?

We strongly support the proposal to require companies to disclose their GHG emissions without first deducting any offsets or renewable energy credits. Given the controversies associated with the quality and permanence of offsets, and the strong sense among an array of institutions and climate experts that offsets should be a last resort after first pursuing economically and technically feasible measures to reduce greenhouse gas emissions, the proposed provision would give needed integrity and usefulness to the disclosed data.

Allowing companies to subtract offsets in calculating reported GHG emissions would create a major factor of inconsistency and uncertainty for investors.

Many of the existing frameworks such as SBTi require any offsets to occur after efforts are exhausted to physically reduce GHG emissions. Leaving any flexibility to include offsets in the disclosure of GHG emissions would undercut the Commission's goal of ensuring credible and comparable GHG emissions disclosures. Making this a standard element of disclosure will simplify the process of investor analysis of company GHG emissions by ensuring that these disclosures are consistent across the market.

B. Disclose criteria regarding offsets including authentication and location

> 173. If a registrant has used carbon offsets or RECs, should we require the registrant to disclose the amount of carbon reduction represented by the offsets or the amount of generated renewable energy represented by the RECS, the source of the offsets or RECs, the nature and location of the underlying projects, any registries or other authentication of the offsets or RECs, and the cost of the offsets or RECs, as proposed? Are there other items

of information about carbon offsets or RECs that we should specifically require to be disclosed when a registrant describes its targets or goals and the related use of offsets or RECs? Are there proposed items of information that we should exclude from the required disclosure about offsets and RECs?

Disclosures regarding offsets are particularly important as a risk management factor because it will take some time before the reliability of offset schemes will be known. There are already many instances of offset failures. Across the market, the overreliance on offsets could easily become another carbon bubble or even a widespread factor in greenwashing by registrants.

This information regarding particular offsets is especially critical for investment firms and funds that are themselves committed to establishing a portfolio-wide net-zero goal. To the extent that portfolio companies are over-reliant on offsets, especially in strategies for areas where the amount of carbon actually offset may be significantly less than claimed, the investors will need to factor the reliability of offsets into their achievement of portfolio-wide goals.

This issue is a significant greenwashing vulnerability of the corporate sector, given the widespread commitments to net-zero goals and the apparent reliance on offsets as part of the strategy for attaining those goals. In February 2022 the New Climate Institute and Carbon Watch released a study of climate strategies of 25 major global companies. 19 of the 25 companies reviewed have offsetting plans, and only one company explicitly planned not to use offsets. Most notably, "[n]one of the assessed companies demonstrates good practice with regards to the transparency set out in their [beyond-value-chain] climate contributions or offsetting claims." The transparency of the offset process as proposed by the Commission is a necessity.

We strongly support disclosure requirements for authentication of offsets and RECs. There are numerous new accreditation organizations emerging to track offsets. Requiring transparency from companies as to which authentication method, is a baseline of investor useful disclosure that will at least allow investors to be able to assess the credibility of the authentication methods that are used.

The various offset accreditation programs each have nuances and procedures. We can easily anticipate that over the course of the next decade, the strengths and weaknesses of the various accreditation programs will become more apparent, and will provide essential information for climate risk management by asset managers and owners.

It is also important to require disclosure of the regions and strategies in which

offsets are being generated and characterizing the nature of the offset project (e.g. nature-based carbon capture, technical carbon capture, avoided emissions in non-company operations, etc.). Information on the location of the offsets will go the furthest to allow investors insight into the reliability and quality of offsets claimed. For instance, offsets related to nature-based carbon capture in the Midwestern region of the United States have certain characteristics as well as uncertainties associated with them.

There is already a rich literature generated by organizations like the Stockholm Environment Institute on strategies for assessment of the quality of offsets. Various factors may undercut the effectiveness and reliability of offsets.

To take one example, most offset and credit systems appear to be blind to the underlying economic dynamics that make credits unreliable. The measurement or calculation of carbon reduction at a given location is not necessarily a good reflection of the reduction of GHGs within the global economy. For instance, credits that reduce farming output at one location may lead to economic forces that result in higher GHG emissions due to additional farming at other locations. While there are many problems with credits and offsets, this issue of "leakage" could be a blind spot even in current efforts to "certify" offsets. It cannot be counteracted by simply measuring carbon sequestration at a single location.

A carbon offset guide published jointly by the Stockholm Environment Institute and Greenhouse Gas Management Institute[22] summarizes the concerns about carbon offset quality as consisting of two principal critiques:

- "Carbon offset credits do not represent valid GHG mitigation; if they are used as a substitute for real climate action, they only make climate change worse."
- "Carbon offset projects have adverse impacts on local communities and may make other environmental problems worse."

The offsets guide notes:

> "Unfortunately, despite the efforts of carbon offset programs, a number of independent studies have identified serious problems with some carbon offset credits. For example, studies of the world's two largest offset programs – the Clean Development Mechanism (CDM) and Joint Implementation (JI), both administered by the United Nations under the Kyoto Protocol – suggest that up to 60-70% of their offset credits may not represent valid GHG reductions.

[22] https://www.offsetguide.org/concerns-about-carbon-offset-quality/describes the concerns about the quality of offsets

> The primary concern is that a large number of offset credits come from energy sector projects that have significant sources of other revenue besides offset credits, suggesting that they would have happened anyway and do not represent additional mitigation. Other identified issues include concerns about over-estimation of emission reductions, e.g., for industrial gas destruction and other project types."

Other critiques have highlighted instances of carbon offset projects that harmed local communities or resulted in broader environmental damage. One researcher noted that, as an example, 75% of offsets purchased within California's cap and trade system have been for projects out of state, so that Californians do not directly benefit from emissions reductions and will continue to inhale the same toxic pollution from local companies. Similarly, carbon offset projects that protect the Amazon forest can lead to the displacement of indigenous people and can actually accelerate the deforestation of areas of the Amazon that have not been protected by the offsets.

Accountability should also be provided in the rules to consider and close the extent to which an offset project either has an impact on host communities where the offset is being generated or because it perpetuates polluting or otherwise harmful activities that would otherwise be mitigated in the absence of the offset credits.

In addition, the quality and reliability challenges for offsets are expansive and not always predicted in the offset programs. For example, as climate change is exacerbating the proliferation of wildfires in Western states, areas where forest preservation was conducted as part of an offset schema have burned, obliterating the intended offsets.[23]

C. Recommendations

1. Include authentication methods in offset disclosure
2. Include disclosure of the location at which the offsets originated
3. Require registrants to report on any indications on the quality or reliability of the offsets taken - whether the offsets represent *additional GHG reductions*, demonstrating that they are not overestimated, that they are permanent if claimed to be permanent, that they are not claimed by another entity, and are not associated with significant social or environmental harms
4. Require registrants to report on impacts of offsets associated with both host communities of offset activities and the impact of activities that are perpetuated that pose a burden on host communities.

[23] https://www.nytimes.com/2021/08/23/us/wildfires-carbon-offsets.html
California wildfires burned land that was put aside for offsets by real verifiers including Verra and the American Carbon Registry, demonstrating one of the risks of reliability associated with nature-based offsets.

ATTESTATION OF GREENHOUSE GAS REPORTING

A. Phase in and upgrade attestation requirements

> 139. Should we require accelerated filers and large accelerated filers to initially include attestation reports reflecting attestation engagements at a limited assurance level, eventually increasing to a reasonable assurance level, as proposed? What level of assurance should apply to the proposed GHG emissions disclosure, if any, and when should that level apply? Should we provide a one fiscal year transition period between the GHG emissions disclosure compliance date and when limited assurance would be required for accelerated filers and large accelerated filers, as proposed? Should we provide an additional two fiscal year transition period between when limited assurance is first required and when reasonable assurance is required for accelerated filers and large accelerated filers, as proposed?

The proposed rule provides that Scope 1 and 2 GHG emissions disclosures should be subject to the attestation that is phased in, beginning with limited assurance and eventually reasonable assurance. We recommend that Scope 3 GHG emissions disclosures also be subject to attestation, phased in on a later timetable.

We want to express an important concern regarding the limited value of "limited assurance." While we recognize that some corporate ESG and social responsibility reporting has been subject to limited assurance, investors have not found those "limited assurance" attestations to be sufficiently credible. Investors are appropriately skeptical about the value of limited assurance in these contexts. As noted in the rulemaking proposal, in footnote 564, limited assurance is the equivalent of the level of auditor scrutiny provided for quarterly reports. The assumption underlying limited assurance is that the reviewer already has familiarity with the company's filings due to more rigorous review at the level of reasonable assurance in the annual report, and therefore a more cursory review of interim reporting occurs in a context of broader knowledge. In contrast, the requirements for limited assurance are not clearly applicable to the context of first-time greenhouse gas emissions reporting without a foundation of a reasonable assurance to start from.

The standard for limited assurance is not reassuring for investors. It states "For a limited assurance engagement the practitioner collects less evidence than for a

reasonable assurance engagement but sufficient for a negative form of expression of the practitioner's conclusion."

Our understanding is that this level of assurance essentially amounts to the idea that the auditor reviewed the company's documents and found that the numbers appeared to be "plausible." This is the interpretation described by the World Business Council for Sustainable Development "Buyer's Guide to Assurance on Nonfinancial Information".[24]

That is a very limited assurance to provide investors. A colloquial way of describing limited assurance would be to say that we looked at the company's materials and no obvious negative indications arose causing us to doubt the plausibility of the reported data.

Of particular concern is the lack of requirement for the reviewer to conduct any *testing* as part of limited assurance. This does not inspire the confidence of investors in the outcome. To the extent that limited assurance is the form of attestation for Scope 1 and 2 emissions for an interim period (or including Scope 3 emissions if you follow our recommendation), we urge the Commission to keep the timeframe for a transition from limited assurance to reasonable assurance as short as possible.

Furthermore, given the vagaries of limited assurance, it would be helpful for the Commission to describe at least some minimum procedures that the auditor would be expected to utilize, in line with the SEC's disclosure requirements for financial audits. These would include, for instance, describing the minimum procedures anticipated for a limited assurance, and requirements to disclose the lead provider's name, any non-auditing related consulting fees from the registrant,[25] conflicts of interest, quality controls, and a demonstration of independence.

We note as well that it will be vital for the SEC to monitor quality and independence closely. As the recent Vale case demonstrated, non-financial "audits" such as the safety audits at issue in that case, merit careful scrutiny and review for quality and independence.[26]

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[24] https://www.wbcsd.org/Programs/Redefining-Value/Making-stakeholder-capitalism-actionable/Assurance-Internal-Controls/Resources/A-buyer-s-guide-to-assurance-on-non-financial-information, page 26.

[25] Disclosure of nonaudit fees is required in SEC financial filings. It is appropriate under the climate rule as well.

[26] https://www.sec.gov/news/press-release/2022-72

B. Include attestation for Scope 3 emissions

The rulemaking proposal does not include requirements for attestation of Scope 3 emissions. As we have discussed earlier, there is ample available information including consulting support and data sources for a registrant to calculate its Scope 3 emissions. Moreover, there are sufficient available procedures and guidelines for the development of Scope 3 emissions metrics that attestation is appropriate. Moreover, given the range of possible approaches and the likely reliance upon a combination of field data and sector-based estimation, there is a compelling argument that the credibility of these disclosures should in every instance be backed with third-party verification, i.e. attestation. As with Scope 1 and 2 disclosures, reasonable assurance should be the ultimate level of review of Scope 3 emissions disclosures.

JUST TRANSITION

While the proposed rule appropriately addresses a wide range of climate-related concerns and risks to issuers and investors, it largely omits attention to the impact on workers and communities of a rapid transition to a Paris-aligned economy. These concerns, generally characterized as relating to a *just transition*, are also relevant to enterprise risks. Many investors, including ICCR members and other investment organizations, currently recognize that if such issues of human capital,[27] and the impact on workers and communities in the transition are not effectively managed, the disruptive impact on livelihoods and public well-being will serve as social headwinds against the rapid transitions that are necessitated by climate change.

The impact on the corporation's stakeholders associated with the company's carbon transition decisions, plans, and actions is often overlooked in the implementation of existing *voluntary* disclosure mechanisms. **Yet, the related issues can be of material interest to investors in order to assess the likelihood of success of companies' transition plans, as well as to decide whether plans meet their criteria for investment.** These factors will ultimately translate to long-term value propositions including employee loyalty, social license, and regulatory risk and liability reduction. If unmanaged, these issues will further impact the health of the

[27] We are aware that the Commission is undertaking another rulemaking focused on human capital management issues. However, there are specific human capital-related issues that are more entangled with climate related risks, and therefore we believe these issues must be contemplated and highlighted in the final SEC climate disclosure rule as well. Examples include the critical need for retraining of employees for the green energy economy, extent to which transition activities are leading to greater turnover, and other efforts of the company to accommodate the needs of the workforce in the midst of this transition. Similar issues are descr bed in the context and recommendations throughout this comment regarding the impact on local communities and indigenous people.

broader economy in addition to impacting communities, creating potential long-term risks to investor portfolios.

Over the last three-plus years, ICCR has led an investor working group on a just transition to a clean energy economy. Investor interest in this working group has significantly grown over that time, leading to increased investor activity engaging companies primarily in the energy utilities sector, on just transition concerns related to workforce and community impacts. This experience with ICCR members has informed the following context and recommendations.

A. Market signals and investor support for a just transition

There is growing recognition among investors of the fiduciary case to manage the social risks associated with climate transition: if not responsibly managed, existing systemic risks associated with racial and economic inequality, lack of decent work, adverse impacts on human rights, as well as environmental degradation, may be exacerbated, creating significant financial uncertainties. Investors, companies, and governments have already faced resistance from workers and communities, and this resistance has slowed the transition.[28] This investor concern and attention to these issues build upon decades of work from labor and environmental justice movements calling for a fair and equitable transition toward a low-carbon future.

Since the founding of the Paris Agreement, investors have been seeking information from companies on how they are managing the social risks for a just transition. The Paris Agreement acknowledges the importance of these risks and calls for "taking into account the imperatives of a just transition of the workforce and the creation of decent work and quality jobs" and "taking into consideration vulnerable groups, communities, and ecosystems." Building on these goals, 17 governments recently agreed to the Just Transition Declaration at the 2021 United Nations Climate Conference, including the United States.[29]

The Paris Agreement, among other market influences, has inspired the development of new investor-facing corporate benchmarks on just transition risks and disclosure to be used by investors. For example, in 2021, Climate Action 100+ (CA100+) introduced its first Just Transition indicators to its Net Zero Company Benchmark assessment, aiming to gain transparency on corporate commitments to

[28] https://www.npr.org/2018/12/03/672862353/who-are-frances-yellow-vest-protesters-and-what-do-they-want?t=1631550037618
[29] https://ukcop26.org/supporting-the-conditions-for-a-just-transition-internationally/

just transition principles, engagement with stakeholders in the development of a just transition plan (specifically, workers, unions, communities, and suppliers), and commitments to retraining, retaining, redeploying and/or compensation of workers impacted by decarbonization, among other indicators.[30] In the same year, the World Benchmarking Alliance released a detailed Just Transition assessment methodology covering an expanded set of criteria beyond CA100+'s, along with a report assessing the performance of the largest global companies across the oil and gas, automotive, and utilities sectors. Increasingly, investors are also looking to existing frameworks and resources to manage risk related to social license to operate, workforce engagement, negative attention, and other social risks in the energy transition, such as the UN Guiding Principles on Business and Human Rights (UNGPs)[31] and the International Labor Organization (ILO) guidelines for a just transition,[32] as well as the use of social dialogue[33] and Free, Prior, and Informed Consent (FPIC).[34]

These issues are also beginning to surface in the European regulatory landscape as well. In 2020, the European Parliament approved the European Green Deal, which requires the EU to "reach net-zero greenhouse-gas (GHG) emissions by 2050; decouple economic growth from resource use; and leave no person and no place behind."[35] These requirements have informed the development of the Sustainable Finance Disclosure Regulation (SFDR)'s social taxonomy, which consists of three objectives to address impacts on different stakeholders, categorized as:

1. Workers (providing decent work, including for value-chain workers);
2. Consumers (providing adequate living standards and wellbeing for end-users); and
3. Communities (ensuring inclusive and sustainable communities and societies).

This also follows the European Financial Reporting Authority Group's (EFRAG) draft approach to non-financial, sustainability reporting by companies under the proposed Corporate Sustainability Reporting Directive (CSRD). At present, the SFDR's social taxonomy is distinct from its environmental taxonomy; however, it is

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[30] See Indicator 9: https://www.climateaction100.org/wp-content/uploads/2021/10/Climate-Action-100-v1.1-Benchmark-Indicators-Oct21.pdf

[31] United Nations Human Rights Office of the High Commissioner, "UN Guiding Principles on Business and Human Rights," (2011) https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

[32] International Labor Organization, "Guidelines for a just transition towards environmentally sustainable economies and societies for all," (2015) https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf

[33] International Labor Organization, "Social Dialogue," https://www.ilo.org/ifpdial/areas-of-work/social-dialogue/lang--en/index.htm

[34] Food and Agriculture Organization of the United Nations, "Free, Prior, and Informed Consent," https://www.fao.org/indigenous-peoples/our-pillars/fpic/en/

[35] https://ec.europa.eu/info/sites/default/files/business_economy_euro/banking_and_finance/documents/280222-sustainable-finance-platform-finance-report-social-taxonomy.pdf pg 10

exploring how the two can be integrated in new models, further underscoring the interrelation between environmental and social impacts of corporate actions and financial decision-making.[36]

Investors are also signaling support for a just transition within their own operations and investment decision-making. In 2018, 161 global investors representing US$10.2 trillion in assets under management demonstrated support for a just transition on climate change within their investment practices, including in investment strategy, corporate engagement, capital allocation decisions, etc. in a statement organized by the Principles for Responsible Investment (PRI). This statement noted:

> *"As investors with a requirement to act in the best interest of our beneficiaries and in line with our fiduciary duties, we believe that strategies to tackle climate change need to incorporate the full environmental, social and governance (ESG) dimensions of responsible investment. There is an increasing recognition that the social dimension of the transition to a resilient and low-carbon economy has been given insufficient attention, notably in terms of the implications in the workplace and wider community. Achieving a just transition, in line with the 2015 Paris Agreement on Climate Change, will help to accelerate climate action in ways that deliver the Sustainable Development Goals."*[37]

Furthermore, nearly 100 global investors representing US$4.3 trillion in assets under management supported a statement organized by ICCR and partners asking companies to support quality jobs and positive community impacts in the transition, founded on concerns about the financial risks and systemic risks imposed by social factors that may delay the transition to a low carbon economy. The statement addresses five core principles to upholding these expectations in the energy transition:

1. Provide a foundation for decent work, job benefits, and working conditions;
2. Offer equitable opportunities for quality jobs;
3. Invest in impacted communities;
4. Facilitate transparency and accountability; and
5. Support just transition policies at all levels.[38]

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[36] Ibid, pg 73-76

[37] https://www.unpri.org/download?ac=10382

[38] https://www.iccr.org/statement-investor-expectations-job-standards-community-impacts-just-transition

There are also growing examples of specific investor guidance for what just transition information would be most useful in investment decision-making:

- A shareholder proposal specifically asking for just transition-related disclosures was filed in the 2022 proxy season, calling for a report stating how the company is responding to the social impact of its climate change strategy on workers and communities, consistent with the ILO's just transition guidelines.[39]
- In BlackRock's 2022 proxy voting guidance for US securities, it referenced the growing consensus that companies can benefit from the more favorable macroeconomic environment under an orderly, timely, and *just* transition to net-zero, and ultimately encourages companies to disclose how considerations related to just transition affect their plans. Specifically, BlackRock mentions considerations such as ensuring protection of the most vulnerable from energy price shocks and economic dislocation in the energy transition.[40]
- Following an investor-led multi-stakeholder roundtable focused on just transition organized jointly with ICCR, the Initiative for Responsible Investing (IRI) released a report detailing investor expectations for energy utilities, specifically on governance board oversight, transition plans, and political engagement related to the just transition.[41] The report also notes the need for "sector-specific guidance laying out investor expectations of corporations on the just transition," which the SEC should consider in its rulemaking. The IRI suggests such sector-specific disclosure should draw on existing protocols for managing worker and community issues such as the ILO's guidelines for a just transition,[42] the UN Guiding Principles on Business and Human Rights,[43] the ITUC's project on social dialogue on working conditions,[44] and the OECD's Guidelines for Multinational Enterprises.[45]

[39] https://www.marathonpetroleum.com/content/documents/Investors/2022_MPCProxyStatement.pdf
[40] https://www.blackrock.com/corporate/literature/fact-sheet/blk-responsible-investment-guidelines-us.pdf
[41] https://iri.hks.harvard.edu/blog/new-iri-report-identifies-investor-expectations-publicly-traded-utilities-just-transition
[42] https://www.ilo.org/wcmsp5/groups/public/@ed_emp/@emp_ent/documents/publication/wcms_432859.pdf
[43] https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

[44] https://www.ituc-csi.org/IMG/pdf/aelf_contribution_to_the_asem_project_on_social_dialogue_on_working_conditions.pdf
[45] https://www.oecd.org/corporate/mne/

B. Just transition risks to investors and companies

Scenario analyses such as those of the International Energy Agency (IEA) call for an unprecedented transformation of our energy systems in order to meet the goals of the Paris Agreement; however, such dramatic changes are expected to come with job displacements, potential increases in customer energy costs, and potential community resistance from impacts of plant closures and new energy infrastructure development, all with heightened risks of disproportionately impacting lower-income communities and/or communities of color. This is supported by the Executive Order on Climate-Related Financial Risk,[46] which clearly states that climate risks should address the disparate impacts on communities of color (consistent with Executive Order 13985 of January 20, 2021 (Advancing Racial Equity and Support for Underserved Communities Through the Federal Government)). These impacts not only have inherent risks to these stakeholders and how the energy transition may impact their livelihoods, but these impacts may also exacerbate systemic risks by slowing the pace and scale of the clean energy transition needed to avoid the most catastrophic impacts of the climate crisis.

These risks also manifest at the enterprise level. Outlined below are examples of these financially material risks that can arise from worker and community impacts related to corporate actions in the climate transition. These risks are aligned with the TCFD's classification of climate-related transition risks.

- **Reputational risk**: Poor public perception of a company's interactions with stakeholders in the transition including but not limited to workers, customers, communities, and Indigenous Peoples can affect a company's public brand and market reputation, which can have negative impacts on employee recruitment and retention, and customer perception. This is particularly relevant in a company's planning and management of its decarbonization strategies that involve infrastructure development, impacts on consumer prices, and direct or indirect impacts on neighboring or downstream communities (see DAPL example below).
- **Market and technology risk**: Sudden market shifts such as the rapid drop in clean energy costs or new green technology developments can impact

[46] https://eur01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.whitehouse.gov%2Fbriefing-room%2Fpresidential-actions%2F2021%2F05%2F20%2Fexecutive-order-on-climate-related-financial-risk%2F&data=05%7C01%7CMarilyn.waite%40climatefinance fund%7C99c77945720a45a107b108da3203dc44%7Ca23ec020e96348748d152e2a34e0288d%7C1%7C0%7C637877289425566552%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000%7C%7C%7C&sdata=4EGGw2X2Qq6xwuqoXybJnbYUWFknEVLnqddIxfJC%2BLo%3D&reserved=0

businesses and workers, threatening revenues and jobs. To adjust to such shifts, companies may need to rapidly deploy retraining/ hiring schemes, which are more costly than long-term, pre-planned schemes developed together with workers and may affect their competitiveness and ability to produce new products and services. Therefore, businesses with poor labor practices may be less able to adapt quickly while maintaining productivity.

- **Legal risks**: Preparation for meaningful workforce and community engagement can reduce the risk of liabilities. A good plan for workforce transition, based on social dialogue, reduces the risk of labor law violations and related legal action. The same applies for a clear, transparent, and early stakeholder consultation process with communities and other public constituencies. The absence of such may trigger lawsuits or other legal actions that may accrue costs and delay projects (see DAPL and Florida examples below).
- **Policy risks**: Climate-related policy and regulatory actions that impact a company's workforce, or that may have implications for how a company manages its impact on communities, can trigger unexpected risks. For example, companies unprepared for carbon pricing regulations may not be able to respond effectively to worker retraining/reskilling needs from changes in costs and market shifts related to such policy. Such policy changes can also lead to increased costs being passed onto consumers, particularly for fossil fuel-based products (e.g. cost of natural gas to heat homes, cost of gasoline, etc.), which may lead to community and consumer opposition and social unrest, as seen in other parts of the world.[47] Lastly, there is increased attention on environmental justice concerns in the U.S. public policy arena, which seek to address disparate environmental impacts on marginalized communities, which can expose companies to new compliance obligations and related risks (example: FERC's formal consideration of environmental justice impacts in natural gas project certifications[48]).
- **Operational and financial risks:** There are also increased financial risks associated with issues of fairness, human capital, just transition, and other stakeholder challenges to climate-related company operations, especially for extractive and industrial sectors. These risks can include:
    - delays in design, siting, granting of permits, construction, operation, and expected revenues;
    - problematic relations with local labor markets;

[47] https://www.npr.org/2018/12/03/672862353/who-are-frances-yellow-vest-protesters-and-what-do-they-want?t=1631550037618

[48] https://www.natlawreview.com/article/ferc-issues-new-policy-natural-gas-project-certifications-first-time-formalizes

- higher costs for financing, insurance, and security;
- reduced output;
- collateral impacts such as diverted staff time and reputational hits; and
- possible project cancellation, forcing a company to write off its entire investment and forgo the value of its lost reserves, revenues, and profits.[49]

C. Examples of just transition risks in corporate activity and decision-making

The following examples demonstrate how these different risks can manifest in a company's operations or decision-making as it relates to climate-related risks and impacts, and why investors seek more information to understand companies' management of such risks.

i. Low road strategy in McDermott International's LNG project leads leads to bankruptcy

Ensuring high quality, skilled, and properly compensated labor can support a reliable and productive workforce in the energy transition. In contrast, some companies attempt to take the "low road" - to do the bare minimum to maintain acceptable working conditions. An example from McDermott International ("McDermott"), a publicly-traded engineering & construction company, demonstrates the risks to companies and investors when companies prioritize low-road labor conditions.

McDermott served as the primary contractor for LNG export facilities run by Freeport LNG and Cameron LNG but ultimately filed for bankruptcy due to cost overruns at these projects. Management attributed the cause of bankruptcy to "poor labor productivity" at its Cameron LNG facility and other construction management issues at Freeport.[50] Both the Cameron LNG and the Freeport LNG export projects were marketed as lowering global emissions levels by exporting gas to replace more fossil-intensive fuel sources used in other countries. But instead of pursuing a just transition strategy of recruiting and investing in the skilled and trained workforce needed to build these gas export facilities, the owners and contractors instead used

[49] https://www.lexology.com/library/detail.aspx?g=3496858d-970c-45c3-aa17-59298dd1b186

[50] https://www.1012industryreport.com/construction-design/cameron-lng-other-losses-appear-to-push-mcdermott-closer-to-bankruptcy-filing/

the H2B visa program to recruit guest workers to build the projects.[51] The poor management of the projects associated with "labor productivity" and the bankruptcy news caused McDermott's stock to lose 90 percent of its value in a single year at the end of 2019.[52] McDermott emerged from bankruptcy in June 2020 after wiping out $4.6 Billion in debt. Common shareholders got nothing in the bankruptcy proceedings.[53]

ii. Energy Transfer Partners' Dakota Access Pipeline and Indigenous Peoples' rights

A well-known example of just transition risks and costs is Energy Transfer Partner (ETP)'s Dakota Access Pipeline (DAPL) and the resistance faced primarily from Indigenous Peoples and local communities. From 2014 to 2017, DAPL faced a number of delays, primarily from opposition from the Standing Rock Sioux Tribe and other tribes with ancestral lands along the path of the proposed pipeline. Indigenous peoples and allies from all over the world joined in protests, boycotts, and lawsuits, leading to material financial impacts to the company. During this period, ETP's stock price declined by 20% while the performance of the S&P 500 grew by 35%. A study from Colorado University's First Peoples Investment Engagement Program calculated the overall projected costs, including the cumulative costs from the social pressure opposing DAPL, totaling nearly $7.5 billion, nearly double the project's initial estimated costs.[54]

This analysis, based on publicly reported data, demonstrates the magnitude of financial losses to companies and shareholders from reputational, legal, and financial risks related to poor management of stakeholder impacts, but many of these risks are often unknown to investors until they become social costs. During the years of action against DAPL, ETP's reporting concerning the project was silent or exclusively positive until the publication of its third quarterly report on November 9, 2016. In this report, the company acknowledged that "protests and legal actions against DAPL have caused construction delays and may further delay the completion of the pipeline project." By this time, social pressure had been mounting for months and there is evidence that the company knew of these risks

[51] Context to the H2B visa program: The H2B visa program is supposed to be only used when a company cannot recruit sufficient domestic labor to staff projects. It is a program rife with abuse. For example, in September 2019, the US Department of Justice announced the sentencing of a man for fraud in using the H2B visa program to recruit 1000 foreign workers to projects on the Gulf Coast.

[52] https://www.bloomberg.com/news/articles/2019-12-30/mcdermott-said-to-be-in-talks-with-lenders-to-file-bankruptcy

[53] https://www.bizjournals.com/houston/news/2020/06/30/mcdermott-exits-bankruptcy-completes-lummus-sale html

[54] First Peoples Worldwide, *Social Cost and Material Loss: The Dakota Access Pipeline,* (2018) https://www.colorado.edu/program/fpw/sites/default/files/attached-files/social_cost_and_material_loss_0.pdf

long before they were disclosed to investors. Information about the protests was available to investors through media reports and other publicly available sources, but the company's acknowledgment of the substantial risk posed to investors was not disclosed in ETP's securities filings until November 9, 2016.

iii. First Solar and Duke Energy solar development impeded by community opposition

The renewable energy sector presents another example of where lack of community engagement and consultation may lead to costly project delays or cancellations. This was recently evidenced in Florida. In 2020, the Alachua County commissioners voted against a solar power facility proposal from First Solar and Duke Energy, citing opposition from the community, which was led by a group of residents in the neighboring historically Black town who highlighted a lack of community engagement on the proposal, as well as "adverse environmental harms for residents due to close proximity of the proposed facility, and a need for just and equitable transition to renewables to avoid environmental racism in decision making." In 2021, a similar scenario played out in a nearby county when Origis Energy proposed the development of a solar power plant in Sand Bluff, Florida. County commissioners also voted against this proposal, citing concern about the lack of community engagement.

As the demand for renewable energy grows to address the climate crisis, companies, whether procuring or developing the energy projects, must take into account these community-based risks to avoid project delays and subsequent impacts to costs or contracts. Investors therefore seek information on how these companies are identifying and addressing these risks, such as through disclosure of stakeholder engagement processes and/or human rights due diligence processes.

The above examples demonstrate the business case for effective stakeholder engagement with labor and impacted communities, founded on principles of social dialogue and Free, Prior, and Informed Consent (FPIC), which ensures stakeholders are not just consulted but that consent is freely given without coercion or manipulation, to avoid costly project delays and other risks material to the company. It is important to recognize that these risks are not mitigated by a single exercise by the company via one-time consultations or meetings with stakeholders. Effective risk mitigation calls for frequent and continuous engagement with stakeholders to address changing preferences and needs, issues of fairness, and evolving project needs, among other factors.

D. Indigenous Peoples' rights in the just transition

Indigenous Peoples deserve particular attention when examining issues of fairness and social risks in the just transition.

First, respect for Indigenous Peoples' rights is central to climate risk mitigation. The UN Intergovernmental Panel on Climate Change's recent reports have acknowledged with "high confidence" that climate adaptation efforts benefit from the inclusion of local and Indigenous knowledge.[55] Indigenous and tribal peoples are critical to forest conservation and climate stability. Studies show that ancestral lands and land under title by Indigenous Peoples are the most biodiverse and best conserved on the planet.[56, 57]

Second, Indigenous and tribal peoples hold a deeply intimate and integral relationship with their environments, have unique ways of relating with the land that enables such effective means of conservation, and they live and subsist in ways that are often not understood or respected by outside entities. Indigenous Peoples' land rights protect this relationship to the environment and the natural resources that support their livelihoods.

International standards and norms enumerate and protect the rights of Indigenous Peoples. When rights are not respected or adequately protected, many Indigenous leaders use the courts, corporate engagement, and other strategies to protect their resources. In many cases, on-the-ground campaigns are formed as a last line of defense of territories. Corporate disregard for the rights of tribal and Indigenous Peoples can generate significant social conflict with impacted Indigenous and tribal peoples and accelerates environmental degradation, climate change, and further violence. This can generate legal, political, reputational, and operational risks for companies and their investors.[58] As noted in the above sections, corporate lack of respect for Indigenous rights has resulted in project delays, cancellations, and heavy financial losses for the companies involved. With this understanding, ICCR members have been engaging companies on the topic on Indigenous Peoples' rights

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[55] https://yaleclimateconnections.org/2021/08/key-takeaways-from-the-new-ipcc-report/

[56] Frontiers in Ecology and the Environment, "Importance of Indigenous Peoples' Lands For the Conservation of Intact Forest Landscapes," January 6, 2020, https://esajournals.onlinelibrary.wiley.com/doi/full/10.1002/fee.2148.

[57] Lais Modelli, "In Brazilian Amazon, Indigenous lands stop deforestation and boost recovery," (13 May 2022) https://news.mongabay.com/2022/05/in-brazilian-amazon-indigenous-lands-stop-deforestation-and-boost-recovery/

[58] Birss, M., & Finn, K. (2022). The Business Case for Indigenous Rights. Stanford Social Innovation Review, 20(3), 50–56. https://doi.org/10.48558/556S-4A69

and FPIC since the early 2000s, primarily filing resolutions with the energy, utilities, extractive, and financial sectors.

The SEC rule does not acknowledge the materiality of the violation of Indigenous Peoples' human rights and land rights in companies' assessments of climate-related and environmental risks. As these factors are imperative to investor understanding of corporate climate risk management, transparency and disclosure of corporate actions to prevent and manage potential and actual violations of Indigenous Peoples' rights are needed.

In the below recommendations for adding just transition concerns to sections § 229.1502 and § 229.1503, we suggest revised and expanded definitions of what should be captured under material risks to business strategy and transition risks such as "host communities" and the "public," which are intended to include impacts on Indigenous Peoples' rights and associated risks. We also suggest background guidance to support the disclosure rule that provides details and considerations regarding impacts on Indigenous Peoples as they relate to a registrant's business strategy, risk management, and transition plans.

E. Recommendations regarding the integration of just transition to the final rule

The following recommendations aim to enable corporate disclosures on the social risks related to issues of human capital, fairness, and just transition as they relate to the management of climate-related and environmental risks.

i. Business strategy and risk management

Revise section § 229.1502 (specifically the strategy section, including identifying material risks) and section § 229.1503 to encourage issuers to disclose any transition strategies relevant to human factors, including impact on human capital and on just transition and issues of fairness.

The proposed rule requires, under § 229.1502 to identify material physical risks and transition risks related to strategy and business model. The proposed rule requires under § 229.1503 to disclose information regarding any transition plans, including relevant metrics and targets used to identify and manage any physical and transition risks, including actions taken during the year to achieve the plan's targets or goals.

Both proposed sections ask the company to address certain physical risks and transition risks, but they are strikingly scant on details regarding the human capital, fairness, and just transition issues that are likely to be pivotal to many transition and physical risks. For example, the impact of physical risks and transition risks implicate the need for re-tooling and re-situating the workforce in quality jobs in the clean energy economy. Both transition and physical risks may also have an impact on fenceline and indigenous communities including on issues of environmental justice and discriminatory pollution.

We suggest an amendment of the strategy section in which the company would describe risks and their impact on the business model or business strategy as indicated in the markup underlined and bold below:

> (i) For physical risks, describe the nature of the risk, including if it may be categorized as an acute or chronic risk, and the location and nature of the properties, processes, or operations subject to the physical risk.
>
> (A) If a risk concerns the flooding of buildings, plants, or properties located in flood hazard areas, disclose the percentage of those assets (square meters or acres) that are located in flood hazard areas in addition to their location.
>
> (B) If a risk concerns the location of assets in regions of high or extremely high-water stress, disclose the amount of assets (*e.g.*, book value and as a percentage of total assets) located in those regions in addition to their location. Also, disclose the percentage of the registrant's total water usage from water withdrawn in those regions.
>
> **(C) If a risk concerns extremes of weather or temperature in certain regions, describe the impact on the workforce and host communities, including any projections of the extent to which such risks may impede the registrant's operations in those regions.**
>
> (ii) For transition risks, describe the nature of the risk, including whether it relates to regulatory, technological, market (including changing **public**, consumer, business counterparty, and investor preferences), liability, reputational, or other transition-related factors, and how those factors impact the registrant. A registrant that has significant operations in a jurisdiction that has made a GHG emissions reduction commitment may be exposed to

transition risks related to the implementation of the commitment. **A registrant undertaking accelerated operations to meet the urgent demands to scale up clean energy technologies, or energy or mineral resource development, may be exposed to transition risks associated with obtaining free, prior and informed consent of indigenous or other host communities, and with ensuring labor practices throughout a company's workforce, including the supply chain, that avoid human rights violations such as forced or child labor.**

***

(b) Describe the actual and potential impacts of any climate-related risks identified in response to paragraph (a) of this section on the registrant's strategy, business model, and outlook.

(1) Include impacts on the registrant's:
(i) Business operations, including the types and locations of its operations **and human capital**;
(ii) Products or services;
(iii) Suppliers and other parties in its value chain **including host communities**;
(iv) Activities to mitigate or adapt to climate-related risks, including adoption of new technologies or processes;
(v) Expenditure for research and development; and
(vi) Any other significant changes or impacts.

We suggest amendment of the language of the transition plan section of § 229.1503 as indicated in the markup below:

(2) If the registrant has adopted a transition plan, discuss, as applicable:
(i) How the registrant plans to mitigate or adapt to any identified physical risks, including but not limited to those concerning energy, land, or water use and management, **including extreme weather or temperature in certain regions, and interrelated impacts on the workforce and host communities;**
(ii) How the registrant plans to mitigate or adapt to any identified transition risks, including the following:
(A) Laws, regulations, or policies that:

(1) Restrict GHG emissions or products with high GHG footprints, including emissions caps; or
(2) Require the protection of high conservation value land or natural assets;
(3) **Require the protection of employees, indigenous communities, host communities, including avoidance of discriminatory impacts and protection of human rights.**

A. Imposition of a carbon price; and
B. Changing **needs**, demands, or preferences of **the public**, consumers, investors, employees, **host communities,** and business counterparties.

We also recommend that to the extent current or planned development, operations, investments, or activities of the registrant (or a registrant's subsidiary or business counterparties) are a substantial part of the registrant's business strategy, climate risk management, or transition plans intersect with local communities, such as local residents and host communities, Indigenous Peoples and other land owners, it should trigger disclosure requirements under sections § 229.1502 and § 229.1503 of the registrant's process to identify and disclose plans to mitigate potential risks related the human capital, fairness and just transition issues; for example, potential job losses from facility closures, or processes for stakeholder consultation with landowners and other rightsholders, etc.

ii. Targets and goals

Revise § 229.1506 on targets and goals to encourage issuers to disclose any transition commitments related to human transitions that are relevant to climate-related actions.

The targets and goals section of the proposed rule identifies potential climate-related goals or targets that the company can disclose pursuant to the rule. In § 229.1506(a)(1) the rulemaking proposal states that a registrant must provide disclosure pursuant to this section if it has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal (e.g., regarding energy usage, water usage, conservation or ecosystem restoration, or revenues from low-carbon products) such as actual or anticipated regulatory requirements, market constraints, or other goals established by a climate-related treaty, law, regulation, policy, or organization.

We recommend that the final rule also include the opportunity for the company to use this as a framework to disclose climate-related goals and targets that relate to human transitions, including human capital management goals related to employee retraining and retention in clean energy jobs, as well as metrics or goals related to human rights expectations of climate change driven initiatives, for example, sourcing of critical mineral extraction on behalf of battery production or other essential products and industries in the energy transition using fair labor standards. We suggest an amendment to the targets and goals section to include human-related targets goals that relate to climate transition plans and risk management as indicated in the markup underlined and bold below:

(a)(1) A registrant must provide disclosure pursuant to this section if it has set any targets or goals related to the reduction of GHG emissions, or any other climate-related target or goal (e.g., regarding energy usage, water usage, conservation or ecosystem restoration, revenues from low-carbon products**, labor or other supply chain-related commitments relevant to sourcing of materials for low-carbon products, or workforce retention, retraining and reskilling**) such as actual or anticipated regulatory requirements, market constraints, or other goals established by a climate-related treaty, law, regulation, policy, or organization. **This should include any targets and goals related to the human impacts of climate-related risk management or transition plans.**

iii. Guidance in the background section of the release

Lastly, to support these recommendations, we also suggest that the background section of the final rule release provide additional detail and guidance regarding the types of goals and considerations that might be relevant to these elements of transition plan disclosure, including discussing further how impacts on and risks arising from different value chain stakeholders may be relevant in disclosure. This guidance may include:

- Guidance on transition risk definitions to inform disclosure on the identification and management of risks:
    - When discussing risks arising from changing public perceptions and demands, the "public" should include, but not be limited, to stakeholders who are directly or indirectly impacted by the registrant's operations, such as neighboring and downstream communities, landowners, and other rights-holders.

- When discussing risks arising from changing perceptions and demands or impacts on employees, "employees" should include the registrant's entire workforce, including corporate employees, contract labor, organized labor, etc.

- Workforce-related considerations for business strategy, risk management, and transition plan disclosure:
  The following recommendations are aligned with the workforce just transition disclosure framework supported by the AFL-CIO's 2021 comment in response to the SEC's request for information on climate change disclosures.[59]
  - Does the registrant engage in social dialogue with its workers and their unions regarding the impacts of climate change on the registrant's business strategy and/or the registrant's plans to manage and respond to climate-related risks?
  - Has the registrant committed to respect internationally recognized workers' rights in its global operations and supply chains as it adapts its operations to address climate change?
  - Does the registrant have responsible contractor policies for procurement or development of climate-related goods and services, such as renewable energy, to ensure that its contracted workforce receives fair treatment as defined by prevailing wage standards?
  - What percentage of the registrant's workforce is classified as employees versus independent contractors as defined by state ABC tests for employment status?
  - Is the registrant fulfilling its social protection obligations, including providing pension benefits and health care for workers whose jobs are impacted by climate change?
  - Does the registrant have a business plan for workforce retention and redeployment of workers whose jobs are eliminated in response to climate change?
  - What skills training is provided as the workforce transitions in response to climate change such as the use of registered apprenticeship programs?
  - Has the registrant implemented occupational safety and health protocols to protect its workforce from climate change-related risks such as exposure to heat stress?

[59] https://www.sec.gov/comments/climate-disclosure/cll12-8914386-244692.pdf

    - Is the registrant subject to legal and regulatory requirements, or does it receive subsidies and tax incentives, to provide for a climate change workforce just transition?
- Other stakeholder considerations for business strategy, risk management, and transition plan disclosure:
    - How does the registrant identify stakeholders (such as the public, host communities, Indigenous Peoples, customers, etc.) that may trigger climate-related transition risks and/or may be impacted by the registrant's management of climate-related risks or business strategy?
    - What is the registrant's process for identifying risks related to changes in public perception and demand, or impacts on public stakeholders and host communities, related to the implementation of its climate goals, transition plans, and/or climate risk mitigation efforts?
    - Does the registrant use any consultation processes (e.g. free, prior, and informed consent (FPIC)) with local communities or other stakeholders, specifically Indigenous Peoples, to obtain consent from those who would be impacted by the registrant's operations or activities as they relate to its business model and climate-related decisions?
    - Does the registrant use existing frameworks such as human rights due diligence (HRDD) processes to identify and mitigate the social and human-related risks related to climate change?
    - How does the registrant's business model and climate-related decisions implicate issues of Indigenous and/or tribal peoples' rights, including through their supply chains, contractors and subcontractors, finance, etc.?
    - Do the registrant's operations or impacts of operations (i.e. downstream pollution from oil drilling waste product) overlap with any Indigenous or tribal peoples' territories (both legally recognized as well as any territories currently under request of legal recognition)?
    - Are the registrant's current or planned operations related to its business strategy or climate risk management at risk of land rights grievances or complaints by local communities?

GOVERNANCE

A. Disclosing climate competency of the board

The proposed rule Section 229.1501(a)(ii) asks for disclosure as to "Whether any member of the board of directors has expertise in climate-related risks, with disclosure in such detail as necessary to fully describe the nature of the expertise." In addition, Section 229.1501(a)(iii) asks for disclosure as to the "processes by which the board of directors or board committee discusses climate-related risks, including how the board is informed about climate-related risks, and the frequency of such discussion."

While we support these necessary disclosure provisions, in our experience there is a need for a broader ongoing educational process for board members to ensure that boards are equipped to deal with a systemic and complex issue like climate change. Investors will increasingly find certain skill sets on boards important to deal with the challenge as it evolves in the near term, including business model disruption, technology innovation and disruption, public policy expertise, and Mergers and Acquisitions. Therefore, we believe an added disclosure requirement should be included, disclosing whether and how the Board of Directors brings in additional expertise and conducts training for the board members, to enable the board as an entirety to navigate and oversee the challenges posed by climate change. Such disclosure can clarify how companies support their boards in staying abreast of developments in climate science, improving the Board's strategy skill set on these complex issues, and helping the board to prioritize discussion of climate impacts on the company and strategies to address these. That would include adding climate and energy-related scientific or academic field experience, or government relations and public policy expertise to the board skills matrix in the proxy. For companies facing significant transition, Board expertise on workforce transition or technology disruption would also be appropriate to note in such disclosures, when relevant.

The proposed disclosures regarding climate-related skill sets, as well as proposed disclosures on board member training, could readily be included in the proxy statement's board profiles rather than the 10K. To simplify Board expertise disclosures, ICCR recommends that the SEC add Climate Change as a category of Board skills to include in any nominee description and/or Board nominee skills matrix, where such a skill is present in the nominee.

B. Board leadership of, and oversight on, climate change impacts and scenario analysis

The proposed rule provides for disclosure of oversight of climate matters by the board, including "Whether and how the board of directors or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight; and "Whether and how the board of directors sets climate-related targets or goals, and how it oversees progress against those targets or goals, including the establishment of any interim targets or goals."

We support these disclosure requirements and suggest that Board members, and/or select committee(s) that have specific oversight of climate change, should report to shareholders how, how frequently, and with what concluding action steps it takes in deliberating various company scenarios related to climate impacts—both positive and negative. This would include the parameters for key scenarios analyzed—like Net Zero 2050, IEA NZ2050, SDS, etc., or less-recognized scenarios and why they were chosen, and how the Board will change its duties, functions, process, or oversight based on the findings of the scenarios (if relevant). Investors would benefit from Boards reporting on the larger takeaways from climate scenario analysis that have led to changes in how the board functions or is structured.

In addition, in disclosure of the strategic involvement of board committees, it would be helpful to encourage the various board committees to report on their particular roles in the oversight of climate-related risks and strategy. For example:

<u>Audit Committee</u>

- Whether or not, and if not–why not, climate change was an issue of consideration of the Audit Committee in its conversations with, and oversight of, both the Auditor hired by the company, and the internal audit staff delegated to assist with the audit of the corporation;
- Note(s) as to whether (and why or why not) climate change was considered a key/critical audit matter in the auditor's report;
- The Audit Committee should be clear with investors whether the Board considers any climate change matter(s) to be a material factor(s) relevant to the company's ability to execute its strategy, drive or maintain revenue and cash flow, or continue its existing business model or its product/service portfolio.

Compensation Committee Oversight

- The committee should disclose the extent to which compensation metrics are tied to concrete climate-related goals or targets. In recent years, many companies have attempted to tie executive compensation and compensation metrics to sustainability and human capital outcomes, but often the metrics have been vague, weak, and don't leave a lot of remuneration at risk if social, environmental, or governance performance is poor. Ideally, factors tied to meeting the climate change goals should apply across the entire executive team, and show evidence of how such performance factors are also linked to rank-and-file employees.

Nominating and Governance Committee Oversight

- Disclose whether it considers, for nominees to the Board, the need for specific skills or experience related to climate change.

C. Public policy and business strategy obligations of the board

The proposed rule's provisions on disclosure of climate strategy of the board and management should, as we discuss elsewhere in these comments, ensure that what a company says, and what it does in the arena of policy advocacy, are congruent. Very often, when it comes to commitments to climate action and goal-setting, Government Affairs and Public Policy executives are not in the room, and either their lobbying practices or their support for external trade associations may stray far from the company's climate strategy and even lead to advocacy of the opposite position. Investors are monitoring these issues and large and small investors are increasingly establishing guidance, and even recommending against votes for reelection of board members, when such misalignment occurs. It is therefore essential for the board to disclose how it identifies and redirects any misalignments between company actions, policies, and commitments on climate change and the direct and indirect advocacy that may thwart such goals. To not address such misalignments will mean increased attention on Board voting (and Vote No campaigns) when climate misalignment is ignored.

POLICY ACTIVITY ALIGNMENT WITH CLIMATE STRATEGY

A. Why corporate climate policy engagement is material to investors

As early as 2011, researchers from Harvard Business School argued that understanding the physical emissions of a company represents an incomplete picture of its climate risk and that corporate policy impacts can fuel systemic risks that could far outweigh that of an individual company's emissions footprint.[60]

In parallel, corporate performance on climate change has been on the investor agenda for well over two decades, with many voluntary initiatives launching during that time, from CDP to the TCFD. To date, disclosures often focus on physical emissions associated with an individual company along with its future GHG reduction plans. And yet, deferral of effective climate policy—and the eventual acceleration of climate impacts—can pose greater financial risks to a company or sector and the economy writ large than GHG disclosure or emissions reduction goals.

With effective climate policies deferred today, policy experts such as the U.N. Principles for Responsible Investment (PRI) have recognized that the delay in policy responses portends an inevitable need for more severe policy responses by governments later, as cataclysmic climate events ultimately lead to regulatory changes for which many companies will be ill-prepared. That, in turn, is anticipated to trigger cascading volatility across markets and in investment funds and portfolios. It is therefore critical that investors understand how companies are engaging on climate policies, including proactive lobbying as well as dilatory tactics, and what risks a company's actions or lack thereof pose to the larger system. Such information is material to investors.

Lobbying and policy activities that are inconsistent with meeting the climate goals and strategies set by the company present several risks, from financial and reputational to regulatory and systemic risks. Investors largely recognize that there are critical gaps between the pledges and commitments national governments have made in their Nationally Determined Contributions (NDCs) and the actions required to stave off the worst effects of climate change; therefore, investors understand that corporations have an important and constructive role to play in enabling policymakers to close this 'ambition gap', which would also contribute positively to the long-term value of their investment portfolios.[61]

As a result, investors worldwide have increasingly engaged companies on three related topics regarding policy engagement activity:

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[60] What Environmental Ratings Miss HBS Working Paper 12-017

[61] Investor Expectations on Climate Lobbying Sign on Letter, Ceres, 2019

1. Whether corporate lobbying and policy practices (both direct and indirect activities) align with the goals of the Paris Agreement to reach a pathway of 1.5 degrees Celsius;
2. Whether any misalignment exists between a company's climate strategies and goals and its political and public engagement;
3. Whether the company engages in policy influence activities through third parties, such as trade associations and policy think tanks, and if so, whether the company has an action plan for addressing any misalignments that may exist between those third parties' activities and positions on climate change with the company's stated climate commitments and priorities.

Investors are currently raising these issues with a broad swath of sectors, and across most major markets. Engagement is happening in the U.S., Canada, the U.K., the E.U., Japan, Australia, and South Africa, and across retail, insurance, and finance, IT communications services and hardware, automotive, oil and gas, utilities, food and beverage, logistics and freight, chemical, and consumer products, among others.

In 2019, investors with over $6 trillion in assets under management signed a letter to U.S. companies requesting improved disclosure on climate policy activity aligned with the Paris Agreement and with corporate climate strategy.[62] In the E.U., in 2018, investor members of the Institutional Investors Group on Climate Change (or IIGCC) sent correspondence to companies with a set of investor expectations for climate-aligned policy activities. Subsequently, the U.N. PRI (a global network of over 1,400 investment signatories with over $70 trillion in assets under management) also weighed in publicly with an amended set of investor expectations around climate change and Paris Agreement-aligned lobbying activity by companies. And in 2022, ICCR tracked at least 23 shareholder proposals filed by our members in the U.S. alone that specifically requested disclosures on climate policy alignment.

This support culminated in the latest action to produce a more globally-uniform set of investor expectations for corporate climate lobbying—known as the Global Standard for Responsible Climate Lobbying.[63] That initiative, triggered by three well-known institutional investors in the U.K. and E.U. (BNP Paribas Asset Management, AP7 of Sweden, and the Church of England Pensions Board) launched in early 2022 with $130 trillion in assets backing the request to companies after a two-year consultation shaped the outcome. The new standard covered public

[62] Ibid.
[63] See www.climate-lobbying.com for text of the standard and how it was developed.

commitments, governance, actions, and disclosures. Investor networks with more than 3,800 signatories and members endorsed the standard at its launch, including the PRI.

Investors have additionally requested that companies publish a yearly review of their lobbying activities and that of their trade associations on climate and energy policy.

B. Financial case for improved disclosure on climate policy alignment

The evidence of this issue being a material factor for investor consideration takes several forms:

i. The number and types of investors supporting the request to companies—or making it themselves—for increased climate lobbying disclosures

Both the PRI and academic analyses show that climate lobbying or climate policy positions that run counter to corporate climate commitments are material pieces of information for investors, but such gaps are not adequately priced into markets--especially sudden policy shifts, such as those referenced in the PRI's *Inevitable Policy Response*.[64] Investors' engagement with companies to address this material gap in information also shows no signs of waning.[65] In just a few years, over 65 large companies across a dozen industries have now produced climate lobbying and policy alignment assessments either with the company's own stated climate goals or with the Paris Agreement or both (ICCR internal analysis). And as noted above, global investors representing $130 trillion in assets have recently backed the request to companies under the Global Standard for Responsible Climate Lobbying, further signaling the intense and increasing interest of institutional investors in this area.

ii. Financial materiality and governance risk

Investors note the rising possibility of financially material risk to companies when misalignment occurs between what companies say on climate change with what they ultimately do.[66] Volkswagen Group's emissions cheating scandal, which made global news and was dubbed "Dieselgate" or "Emissionsgate," had

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64 https://www.unpri.org/sustainability-issues/climate-change/inevitable-policy-response

65 *Wall Street Journal*, March 14, 2022: https://www.wsj.com/articles/investors-dial-up-pressure-over-companies-climate-lobbying-11647272299

66 https://cleanenergynews.ihsmarkit.com/research-analysis/corporate-talk-on-climate-change-not-matched-by-lobbying-ceres html

an impact that was financially material[67] not just to VW, but it also triggered an investigation into many of its automotive peers, which unearthed widespread auto company involvement in such emissions misrepresentation, and billions of dollars in fines and settlements.

The "Dieselgate" case also illustrates the value of understanding policy engagement behavior as a proxy for true management thinking on how a company is approaching the risks or opportunities of climate change. Soon after the Dieselgate scandal went public, ESG data provider Sustainalytics noted in a conference presentation that Volkswagen already had been assessed with a poor governance ranking by the firm, which led to its poor ESG assessment prior to the scandal, and which should have been a red flag for investors.

The research organization Influence Map noted in its comment letter to the SEC in 2021[68] that the Dieselgate scandals provide "telling case studies as to how a deeper understanding of corporate policy engagement could have served to protect investors from material loss. While the Volkswagen Group presented itself as a climate and sustainability leader, its actual policy engagement represented dramatically different behavior. A lack of understanding as to how the company (along with others in the sector) was managing regulatory risk shocked shareholders and resulted in an SEC lawsuit (March 2019). It is noted that Volkswagen chose to defraud NOx-related rules to comply with increasingly stringent and climate-motivated CAFE efficiency standards in the US."

The case study also provided one of many clear examples of how climate lobbying strategies may contradict a company's purported climate change commitments and serve to both confuse investors and obfuscate real corporate motives. The SEC should therefore consider, at a minimum, disclosure requirements on climate lobbying alignment with corporate climate policy strategy when the omission or misrepresentation of such information would be deemed material under Rule 10b-5.

iii. Systemic risks posed to economies from the lack of market-wide climate policies

Several U.S. Senators note in a 2022 letter to SEC Chairman Gary Gensler that "corporate lobbying against climate action or lack of engagement in favor of climate

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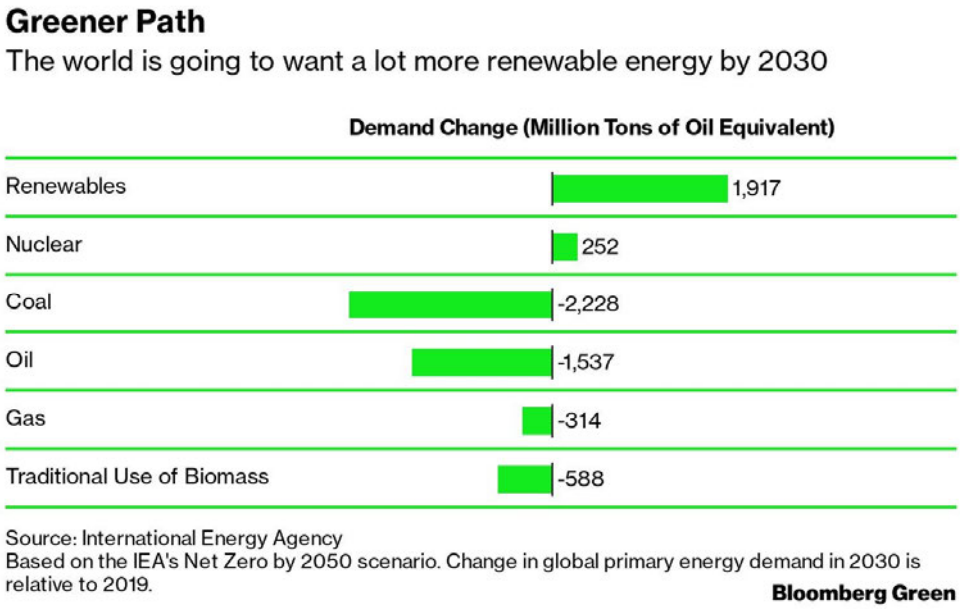
[67] https://en.wikipedia.org/wiki/Volkswagen_emissions_scandal: "Regulators in multiple countries began to investigate Volkswagen and its stock price fell in value by a third in the days immediately after the news. Volkswagen Group CEO Martin Winterkorn resigned, and the head of brand development Heinz-Jakob Neusser, Audi research and development head Ulrich Hackenberg, and Porsche research and development head Wolfgang Hatz were suspended. Volkswagen announced plans in April 2016 to spend €16.2 billion (US$18.32 billion at April 2016 exchange rates) on rectifying the emissions issues, and planned to refit the affected vehicles as part of a recall campaign. In January 2017, Volkswagen pleaded guilty to criminal charges....Winterkorn was charged in the U.S. with fraud and conspiracy on 3 May 2018-As of 1 June 2020, the scandal had cost VW $33.3 billion in fines, penalties, financial settlements and buyback costs."

[68] Influence Map RFI comments May 2021: https://www.sec.gov/comments/climate-disclosure/cll12-8785675-237721.pdf

action is therefore directly relevant to the costs companies may bear as a result of the increased physical risks of climate change."[69]

Transition risks to companies and to investors are exacerbated by delays in global climate policy caused by heavily financed anti-climate lobbying and a dearth of pro-climate change corporate policy engagement. Mark Carney, as then-Governor of the Bank of England, wrote in his famous "Tragedy of the Horizon(s)" piece that the "[r]isks to financial stability will be minimized if the transition begins early and follows a predictable path."[70] Other economic experts sound a similar note when discussing a potential "carbon bubble"—and the likely possibility that severe economic damage from a burst carbon bubble "'could be avoided by decarbonizing early,' and '[t]he extent to which financial exposures will translate into shocks depends on the ability of market participants to anticipate climate policy measures. If climate policies are implemented early on and in a stable and credible framework, market participants are able to smoothly anticipate the effects.'"[71]

The chart below, from the Bloomberg Green Daily newsletter[72], notes the International Energy Agency's (IEA's) projections of the extent of renewable and low-carbon energies needed in a net-zero by 2050 scenario and dramatic decline in oil, gas, coal, and traditional biomass just within the next 8 years (from a 2019



[69] https://www.whitehouse.senate.gov/imo/media/doc/Letter%20to%20SEC%20on%20Climate%20Disclosure%20Final.pdf

[70] "Breaking the tragedy of the horizon: climate change and financial stability," Mark Carney (Sept. 29, 2015), available at https://www.bis.org/review/r151009a.pdf

[71] Jean-François Mercure, et al., "Macroeconomic impact of stranded fossil fuel assets," *Nature Climate Change*, Vol. 8, pgs. 588 – 593 (2018), https://www.nature.com/articles/s41558-018-0182-1; Stefano Battiston, et al., "A climate stress-test of the financial system," *Nature Climate Change*, Vol. 7, pgs. 283 –8 (2017), https://www nature.com/articles/nclimate3255

[72] Bloomberg Green Daily newsletter feature, May 27, 2022.

baseline, pre-covid fluctuations). The fulfillment of the scenario is a short-term risk because of the infrastructure lifespans and time horizons for the infrastructure investments needed. Yet, many companies globally–and especially in the U.S.--continue to lobby for and invest in business strategies, scenarios, products, and energy types that would face substantial stranding and asset depreciation in the coming decade under the net-zero scenario.

C. Compliance risks, material omissions of fact, and the 'climate lobbying delta'

Investors are heightening their scrutiny of the "climate lobbying delta"—meaning the difference between what a company commits to and says about climate change strategy versus what it actually does away from the public eye, and what it advocates for directly to policymakers and regulators, as well as through trade associations and related entities.

Glass Lewis and Institutional Shareholder Services (the two largest proxy advisory services in the world) are responding to this increased investor due diligence with more detailed assessment of corporate behavior on climate change when misalignments appear. For example, Glass Lewis notes the following about climate lobbying oversight and policy alignment issues:

> 2022 ESG Initiatives Voting Guidelines, Climate-Related Lobbying:
>
> · "…There is a growing acknowledgment by investors and companies that ensuring alignment between stated values and lobbying expenditures, including those of trade associations, is an important consideration. When companies actively lobby, whether directly or indirectly, in a manner that seems to contradict their espoused priorities and positions, it can result in the inefficient use of corporate resources, confuse a company's messages, and expose a company to significant reputational risks. Accordingly, Glass Lewis will generally recommend in favor of proposals requesting more information on a company's climate-related lobbying. When reviewing proposals asking for disclosure on this issue, we will evaluate: (i) whether the requested disclosure would meaningfully benefit shareholders' understanding of the company's policies and positions on this issue; (ii) the industry in which the company operates; (ii) the company's current level of disclosure regarding its direct and indirect lobbying on climate change-related issues; and (iii) any significant controversies related to the Company's management of climate change or its trade association memberships." (p. 27)

This focus on both process (a gap analysis) and impact (acting on the findings of such an analysis) are articulated in documents from all three of the world's largest institutional investors (by total assets under management). In its *2021 Stewardship Expectations* brief, the world's largest asset manager, BlackRock, highlighted that lobbying and trade association alignment was a priority: "We will now seek confirmation from companies…that their corporate political activities are consistent with their public statements on material and strategic policy issues. Moreover, we expect companies to monitor the positions taken by trade associations of which they are active members on such issues for consistency on major policy positions and to provide an explanation where inconsistencies exist."

An example of the importance of such a gap analysis and identification of company policy misalignment is reflected in a shareholder proposal filed at Norfolk Southern for the 2021 proxy statement by ICCR member Friends Fiduciary, asking the Board to conduct an evaluation and issue a report to assess climate lobbying alignment. In its first year going to a vote, the proposal received 76% support from shareholders. The resolution was originally filed to address Norfolk Southern's seemingly contradictory emissions reduction commitments and trade association activities. The company had set short-term greenhouse gas emission goals and had committed to adopting a science-based reduction target,[73] which was positively received by investors. However, the company had also been funding lobbying organizations, such as the American Coalition for Clean Coal Electricity, which worked to discredit climate science and opposed most federal climate policies. This lobbying behavior, according to press reports,[74] reflected the fact that the transport of coal represented one of the company's primary business lines, which raised significant investor concern as it contradicted the company's clearly-stated climate strategy.

This example demonstrates the need by investors for additional disclosures on corporate climate policy practices and why this information can be quite material in investment decision-making. The company's need to reconcile the misalignment between its lobbying and policy activities—including by third parties like a trade association--and its own stated strategies highlight both the greenwashing challenge investors are facing in their day-to-day issuer analysis and the importance of general strategy and business model alignment with policy influence engagement activity.

Yet, Norfolk Southern is but one example of an increasing roster where shareholder concerns over policy and action misalignment are occurring. In 2021, ICCR members garnered majority support from the majority of proposals going to a

[73] http://nscorp.com/content/dam/nscorp/get-to-know-ns/about-ns/environment/Norfolk-Southern-2020-CDP-filing.pdf p. 15.
[74] https://www.theatlantic.com/science/archive/2019/12/freight-railroads-funded-climate-denial-decades/603559/

vote, including ExxonMobil (63.8%), Phillips 66 (62.49%), and United Airline Holdings (65%), in addition to Norfolk Southern.

D. Board responsibilities and climate policy governance

While U.S. companies are increasingly setting GHG reduction goals, making Net Zero commitments, or touting their climate change credentials for new business investment, an analysis in 2021 by US nonprofit Ceres of 96 large, US-based companies noted that corporate Boards are missing critical pieces of information to understand how their respective companies are engaging on climate policy.[75] Among the assessed companies, 74% publicly acknowledged climate change as a material risk to their enterprises, 88% formally tasked their boards with the responsibility to oversee climate or sustainability issues, and 92% were setting GHG emissions reduction goals for their own operations. *But,* 21% lobbied in opposition to such policies, and these were "often the same companies that were establishing targets and lobbying for climate regulation in other contexts." Such misalignments raise serious issues for investors around climate governance, strategy oversight, material risks from misrepresentation of information, and other concerns. The authors of the report suggested three critical steps to address this misalignment, which ICCR agrees with:[76]

> 1. **Assess the value-creation opportunities that open with climate regulation in place.** Firms generally prefer free markets over increased regulation, but what would uncontrolled climate change really look like" for business strategy? It notes that increased storm activity, wildfires, droughts, and populations displaced as a result of climatic changes would likely negatively impact operations;
> 2. **Systematize decision-making on climate change across the company.** Boards with an explicit mandate to oversee both climate change and public policy are best positioned to consider these issues and the overlap between them regularly and robustly." ICCR members (along with the Ceres report recommendations) have recommended to companies during climate policy engagements that companies formalize this responsibility within the Board, including with the addition of language in the appropriate board committee charter(s) where appropriate.
> 3. **Regularly conduct an audit of the company's climate positions to ensure consistency.** A growing number of investors are calling on companies to conduct internal audits, which the board should oversee, into the extent to which lobbying efforts are aligned with science-based climate

[75] https://blog nacdonline.org/posts/climate-governance-lobbying-oversight; https://www.ceres.org/practicingRPE
[76] Ibid.

policy. These audits should cover both direct lobbying with policymakers and indirect lobbying conducted on a company's behalf by the trade associations to which it belongs. Boards should oversee these internal audits at regular intervals as the scope and context of climate impacts evolve, and they should systematize concrete steps and timelines to address any misalignment that the audits reveal. Amid investors' growing interest in companies' lobbying efforts, it is also strongly recommended that companies disclose the results of those audits as well as the steps companies plan to take to tackle any misalignment they find." This step is further highlighted in the *Global Standard for Responsible Climate Lobbying* and is a critical aspect of every ICCR investor engagement with companies on climate lobbying.

Investors are aware of many additional examples making the news regarding climate lobbying misalignment, from the ExxonMobil "recruitment sting" scandal in 2021[77] to banking giant HSBC's "Miami underwater in 100 years" reputational risk impacts during May 2022.[78] This is to say that the issue of aligning climate policies and lobbying with internal corporate strategy is not confined to a few sectors like heavy greenhouse gas emitters but is broadly applicable to many public companies. Investors, therefore, need additional information from company boards regarding the governance structures in place to ensure that external statements and advocacy align with the internal positions and commitments of companies on climate action.

E. Key reasons why investors ask for these disclosures

ICCR's investor members have communicated several key reasons why investors are seeking disclosures from companies on lobbying alignment, including:

- Complementing corporate risk analysis.
- Internal and external corporate benchmarking on climate readiness and risk.
- Managing fund strategies for systemic risks.
- Need for improved and more consistent data to assess climate regulatory risk for companies, projects, and industries.
- Material investment factor when business model/strategy/revenue is strongly impacted by climate policy in a negative or positive direction.
- Materiality triggers, when a company's business model is dependent on specific policies coming to fruition, such as Electric Vehicle producers' dependability on the emergence of global EV recharging infrastructure.

[77] https://www nytimes.com/2021/06/30/climate/exxon-greenpeace-lobbyist-video.html
[78] https://www.independent.co.uk/tv/news/hsbc-climate-change-miami-joke-b2085313.html

- Serving as a proxy for management's thinking on business preparation for the energy transition, and how a company will respond, or pivot to address future needs.
- Issue is important in proxy voting decisions and determining board election criteria for oversight of risk, climate and policy strategy, and business model.
- Potential divestment criteria: The Swedish AP7 fund, for example, halted investments in ExxonMobil and others, based on climate policy engagement criteria it had developed.
- Engagement: Policy lobbying alignment on climate change is a strategic element within the Climate Action 100+ (CA100+) investor framework, which has the support of at least 545 investors with a total of $52 trillion in signatory assets under management.

F. Corporate climate policy disclosure needs are not being addressed by existing market forces

Investors, through countless voluntary efforts via corporate engagement on climate policy disclosure alignment, often receive misleading and "greenwashing" responses from companies with little evidence backing up corporate claims. Some investors support an increased role for third parties (auditors or assurance providers) in checking such policy alignment disclosures on behalf of investors.

To improve investor confidence in company actions and disclosures regarding climate policy activity, investors are encouraging companies to ask trade associations and other entities which lobby on their behalf to report back annually to contributing or participating companies on the lobbying activities, policy positions, and related information so that companies and boards have the needed disclosures to complete an alignment exercise each year on climate policy alignment.

Although mandatory auditing of direct and indirect climate policy lobbying and positions taken would be preferred by some groups of investors, since greenwashing can be widespread in this area, we suggest that the SEC examine this issue and how the credibility of climate policy disclosures can be improved. The current disclosure regime is extremely ill-suited to investor needs. For example:

- The current US framework addressing lobbying disclosures by companies is the Lobbying Disclosure Act (LDA) of 1995 and subsequent updates. Data generated by the LDA falls short of investor needs though, as it defines the term 'lobbying' in a relatively narrow way, and does not include a broader range of influence activities under this reporting. Secondly, the LDA does not require details about the

position taken by the company, or its lobbyists, related to the actual policy stance on a given bill or regulation. It is therefore unclear whether a company or its lobbyists would be for or against a bill being disclosed in the LDA report.

- Existing climate change and ESG frameworks do not adequately cover the topic: neither the Taskforce on Climate-Related Financial Disclosures (TCFD), nor the Sustainability Accounting Standards Board (SASB), or the Climate Disclosure Standards Board (CDSB) [both now subsumed into the International Sustainability Standards Board as of June 30, 2022] substantively mentions climate policy engagement or climate policy misalignment as a material issue.

- Since a lot of policy activity conducted by trade associations, policy think tanks, and related business alliances have little U.S. obligation to disclose their day-to-day influence activities and policy stances, it is quite difficult for investors to do an internal assessment of a company's climate strategy and commitments with a determination of alignment or misalignment within their policy and lobbying activities—especially when conducted by third parties.

Several entities mentioned in these comments, however, are working to create standards, reporting expectations, benchmarking, and other useful investment tools on this issue, and the SEC would have a stronger final rule if it scrutinized the governance, compliance, and reporting gaps that remain in this area.

Organizations and investor networks that are benchmarking and evaluating corporate actions, policies, and governance practices around climate lobbying and policy engagement include: ICCR, Ceres, CDP, the Transitions Pathway Initiative, the Climate Action 100+, Influence Map, the Center for Political Accountability's Zicklin Index, the Global Standard for Responsible Climate Lobbying, and the Principles for Responsible Investment, among others.

G. Where should such disclosures be made?

As InfluenceMap notes in their 2021 comments: "Laws and regulations prohibit companies from making materially false or misleading statements. Likewise, companies are prohibited from omitting material information that is needed to make the disclosure not misleading. In addition, a company's CFO and CEO must certify to the accuracy of the 10-K and 10-Q."[79] Investors also increasingly have an

[79] https://www.sec.gov/comments/climate-disclosure/cll12-8785675-237721.pdf

interest in understanding the details and mechanics of how corporations are engaging on policy areas material to their businesses even beyond climate change. "Sectors where opaque policy engagement could be hiding material investor risks include drug pricing and healthcare, financial regulatory reform, digital/internet regulations, etc. Making [these disclosure obligations on climate policy engagement] generic and applying as part of the S-K process in general could radically improve investor understanding of corporate behavior in highly regulated sectors," including beyond climate change itself. InfluenceMap 2021 comments (p.8).

H. Congressional Budget rider on the disclosure of political contributions and dues

We note that the SEC's activities are constrained by a Congressional budget rider which prohibits the expenditure of funds by the SEC to require the disclosure of political and tax-exempt contributions or dues paid to trade associations. The rider specifies:

> Sec. 631. None of the funds made available by this Act shall be used by the Securities and Exchange Commission to finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax-exempt organizations, or dues paid to trade associations.

However, it is clear that this rider is focused on the disclosure of *contributions* and *dues*. Therefore, our recommendations do not seek disclosure of such expenditures but instead focus on the company's assessment and demonstration of alignment of any such spending on lobbying and other policy advocacy, including through trade associations.

I. Recommendations for policy disclosure requirements in the rulemaking proposal

1. Amend the governance provisions of the rule proposal to require
    a. Disclosure of Climate Change Competency and Policy/Regulatory Affairs expertise in any board skills matrix or nominee qualifications.
    b. Disclosure of Board's oversight role and responsibilities related to both climate change strategy, and climate change policy oversight and due diligence, including any role of Board committees.

2. Amend the risk management provisions of the rule to require that a company in a high-GHG-emitting sector, or that has made public claims regarding alignment with or support for the Paris Agreement, or that has publicly committed to a low-carbon transition plan or similar emissions reduction commitments, to disclose whether it has lobbied directly or

through third parties on climate change matters, and if so, whether such lobbying activity is aligned with the company's stated climate strategy or transition plan—as well as the method the company and board used to determine that alignment. If any misalignment is identified, the Board director or Board Committee should explain to investors how the company is addressing the misalignment. Include requirements for such assessment to also include assessment of lobbying by third-party organizations such as trade associations supported by the company, including establishing requirements for transparency of trade association lobbying activities to allow the company to track these activities and evaluate alignment.

3. Provide guidance in the background section of the rulemaking release to make it clear that disclosure of an "aligned" strategy, net-zero commitment, or other proactive transition strategies may necessitate disclosure of any contradictory policy advocacy supported by the company. Failure to disclose such contradictory lobbying positions in light of the other disclosures may be considered a materially misleading omission.

PHYSICAL RISK

A. Final rule should address company preparedness for how the physical risks of climate change impact the company's workforce and the communities in which it operates

59. Should we require registrants to disclose the financial impact metrics, as proposed? Would presenting climate-specific financial information on a separate basis based on climate-related events (severe weather events and other natural conditions and identified physical risks) and transition activities (including identified transition risks) elicit decision-useful or material information for investors? Are there different metrics that would result in the disclosure of more useful information about the impact of climate-related risks and climate-related opportunities on the registrant's financial performance and position?

At various locations in the proposed rule, physical risks are discussed, including in the business strategy, risk management, transition plan, and financial statement sections of the rule. In each instance, there is inadequate granularity regarding the substantial impact that physical risks may impose on humans - on the workforce and on the communities in which the company operates. The hardships on these stakeholders also threaten enterprise value. Therefore, disclosure of physical risks to human beings as they intersect with the company's activities and interests is an important element of disclosure that is neglected in the draft rule.

B. Workforce impacts

Currently, investors encounter little disclosure regarding the effects of climate change on a registrant's workforce. That can and should be remedied in the Final Rule.

Academics, health care practitioners, and local, state, and national agencies (like the U.S. Centers for Disease Control and Prevention and the National Institute for Occupational Safety and Health) have all recognized some of the most critical risks from climate change to worker health and safety: those include severe heat stress, dangerous humidity levels, the magnification of dangerous air pollutants or climate-related exposure to hazardous chemicals, allergy hazards exacerbated by climate change, extreme weather risks impacting workforce locations and the surrounding community (like flooding, hurricanes, tornadoes, droughts, and wildfires—to name a few), and biological vectors/pathogens where climate change increases the risk of illness, disease, contagious infections, and lethal outbreaks. These impacts on the workforce not only pose risks to the health of employees and subcontracted workers and their families; there is widespread evidence that such impacts will affect GDP, workplace productivity, the hours and conditions under which workers can operate, and other factors critical to business revenue generation.

In 2019, the California Public Employees Retirement System (CalPERS) and Wellington Management produced a Climate Risk model that focused on specific categories of physical risks.[80] They noted both acute and chronic physical risks for workers: "Above certain levels, heat, especially when combined with humidity, takes a human toll. As regions see more days of high heat, labor and energy costs may climb as outdoor productivity and hours decline and workers move indoors. Health care costs may go up, especially among vulnerable populations. Customers

[80] https://www.wellington.com/uploads/2019/10/21eb89c87e979daca0b3fe271c7408e1/physical-risks-of-climate-change_procc_framework.pdf

may change vacation destinations or have less interest in outdoor venues. Outdoor agricultural and construction productivity and hours worked may drop."[81]

The U.S. CDC notes that: "A number of both indoor and outdoor worker populations may be particularly vulnerable to climate variations. Examples include emergency responders, health care workers, firefighters, utility workers, farmers, manufacturing workers, and transportation workers. Climate conditions can amplify existing health and safety issues and could lead to new unanticipated hazards. *Workers may also be exposed to weather and climate conditions that the general public can elect to avoid*. For worker populations such as migrant workers and day laborers who may have inadequate housing or other social and economic constraints, the adverse health effects of exposure to climate-related hazards in the workplace could be exacerbated by exposure to similar hazards in the home."[82]

C. Affected populations where companies operate (corporate community impacts)

Beyond the very real risks of extreme weather events, which are taking an increasing economic toll on communities throughout the U.S., and of which many are linked to the exacerbating effects of climate change, acute impacts to local/regional populations where companies operate should be on corporate radars, as these risks can and often do force companies to shift strategy due to the inability of local businesses to function in support of company activities. For example, CalPERS and Wellington note the lesser-discussed challenge of drought as a physical risk issue with compounding effects, which can impact "the availability, access, and pricing of water and food" for both workers and local residents. [4] A company may be forced to shift its strategy when corporate demands for local water come into conflict with community needs, and climate change is driving a surge in that regional water competition.

Additionally, floods, wildfires, hurricanes, and other climate-magnifying events close schools, hospitals, supermarkets, banks, and other essential services, which put added strain on companies' abilities to operate in affected areas—especially when the corporate workforce is focused on meeting basic survival and safety needs of their families first. The SEC need look no further than climate weather disasters from just the past three years for a plethora of examples of how these physical risks

[81] Ibid.

[82] https://www.cdc.gov/niosh/topics/climate/how html

play out in communities, and the resulting impacts on company productivity and operational capacity in those impacted regions, to understand investor concerns.

Moreover, for some companies, particular impacts of their operations on host communities are exacerbated when the physical impacts of climate change affect their operations. An example is flooding of manufacturing or chemical production operations that lead to toxic releases to adjacent communities.

Therefore, investors need greater and more granular information about how companies are assessing, planning for, and investing in solutions that lessen these regional workforce and community impacts, as there is a direct connection to the bottom line with both the severity and frequency of such events stemming from climate change today.

D. Compounded risks and impacts to workers from climate

While policymakers need to take a closer look at the way these issues are taking a toll on essential workers in vulnerable sectors like agriculture, manufacturing, and emergency response, the SEC has a different role here in driving better transparency about the depth to which these issues are impacting corporate planning and workforce response, as well as how companies are developing solutions to mitigate these risks—especially when it comes to more vulnerable workers. This includes the indirect ways in which climate change poses structural risks to workers dealing with the physical impacts they face. "While many of the effects of climate change on human health are well-documented, there is a marked absence of focus on the ways these effects impact workers and the ways climate change can stress the systems designed to protect them, like OSHA and workers' compensation programs,"[83] notes a thought-piece from Georgetown Environmental Law Review.

Both academic literature and US health agencies note that certain subsets of workers, in particular, are at higher risk than others, based on the typical conditions of their job function: the risk of illness or major injury is directly proportional to rising global temperatures for those "on the front lines" of responding to extreme weather events and natural disasters. The rising "frequency and magnitude" of such extreme weather events that are putting more and more workers in harm's way should be a factor in corporate strategy, mitigation, and reporting to investors.

[83] https://www.law.georgetown.edu/environmental-law-review/blog/workers-among-most-vulnerable-to-climate-change/

Agricultural and other outdoor workers are especially vulnerable to weather conditions. "Those who are paid based on how much they harvest are dis-incentivized from taking breaks to rest, hydrate, and move to cooler areas,[84] notes the Georgetown Law publication *Workers Among Most Vulnerable to Climate Change*. "The resulting dehydration may be the cause of an outbreak of chronic kidney disease among agricultural workers,"[85] it adds—clearly showing the compounded effects on subsets of the workforce. Manufacturing is another industry noted in academic studies where many workers "are exposed to heat because the buildings that house large-scale manufacturing are too big to be air-conditioned and can be hotter inside than outside.[86] For both indoor and outdoor workers, heat exposure can cause heat exhaustion, and heat stroke, and can exacerbate existing chronic diseases.[87] Hotter working conditions are also associated with reduced cognitive function, which leads to increased risk of injury and decreased productivity,"[88] the research notes.[89]

Climate change is intensifying other seemingly indirect threats as well, such as exposure to hazardous chemicals, insects, and pathogens. As "weeds and pests expand, farming tends to rely on more and different pesticides, to which agricultural workers are then exposed. Environmental pollutants to which workers are already exposed are more volatile due to warmer temperatures, which can result in airborne transport of chemicals for long distances."[90] And, as mentioned above, mosquitos, ticks, and other vectors of illness are seeing expanded ranges, which has health implications for many outdoor workers.[91] The CDC notes that "climate conditions such as temperature and rainfall affect the prevalence and distribution of vectors, pathogens, hosts and allergens. Associated health impacts include food-borne and water-borne diseases; asthma and allergies triggered by pollen; mold-related asthma; skin and lung irritation from poisonous plants; and vector-borne diseases such as Lyme disease, dengue, chikungunya, and Zika virus disease. The most vulnerable occupational groups may include outdoor workers,

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84 Barry Levy & Cora Roelofs, *Impacts of Climate Change on Workers' Health and Safety*, Oxford Research Encyclopedia, Global Public Health (Feb. 25, 2019), https://doi.org/10.1093/acrefore/9780190632366.013.39

85 Ibid.

86 Colleen Walsh, *Toll of Climate Change on Workers*, Harvard Gazette (Nov. 1, 2019), https://news harvard.edu/gazette/story/2019/11/researcher-analyzes-effects-of-climate-change-on-productivity/

87 Levy & Roelofs, *supra* note 1.

88 Max Kiefer et al., *Worker Health and Safety and Climate Change in the Americas: Issues and Research Needs*, 40(3) Rev. Panam Salud Publica, 192 (2016), https://www ncbi nlm nih.gov/pmc/articles/PMC5176103/

89 https://www.law.georgetown.edu/environmental-law-review/blog/workers-among-most-vulnerable-to-climate-change/

90 Levy & Roelofs, *supra* note 1.

91 Ibid.

emergency responders, post-disaster remediation and construction workers, and health care workers."[92]

While obvious, it should still be noted that workers are at much greater risk than the general population because they cannot avoid the hazards noted above; "their livelihood requires such exposure.[93] "Workers' exposures are greater in frequency, duration, and intensity, and they have been described as a 'canary' in the 'coal mine' of climate change."[94]

And for low-wage workers, and workers operating within deeper layers of the supply chain, the health impacts in the workplace may also be compounded by several non-work-related issues, such as inadequate housing, lack of healthcare access or vaccination, or a lack of air conditioning or proper transport. As ICCR has witnessed in several industries like meatpacking, apparel, and agricultural work (where our investor members have been engaging companies on worker rights and workplace conditions for over 30 years)—including during the Covid-19 outbreak in the US--the more vulnerable workers are, the less power and authority they feel they have to advocate for workplace-based protections, or even company-provided safety equipment (PPE).

We also note that several US agencies can provide current data on these risks, and the subset of workers most likely to be impacted, including NIOSH, the CDC, and the Dept. of Labor.[95]

E. Recommendations

The Commission should clarify in the text of the final rule or accompanying release that the risk management, transition planning, and financial statement elements should include qualitative and quantitative disclosures on how the physical risks of climate change to the company's workforce and the communities in which it operates are posing challenges and risks to the company, and any mitigation efforts and investments in the workforce or communities to reduce the likelihood of such impacts.

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[92] https://www.cdc.gov/niosh/topics/climate/how html

[93] *Impact of Climate on Workers*, Nat'l Inst. for Occupational Safety and Health (NIOSH), Ctrs. for Disease Control and Prevention (CDC), https://www.cdc.gov/niosh/topics/climate/how html (last reviewed Dec. 6, 2016)

[94] Cora Roelofs & David Wegman, *Workers: the Climate Canaries*, 104(10) Am. J. Pub. Health, 1799 (2014), https://www ncbi.nlm nih.gov/pmc/articles/PMC4167120/.

[95] https://www.cdc.gov/niosh/topics/climate/how html; www.cdc.gov/niosh/topics/heatstress; https://www.cdc.gov/niosh/topics/pesticides/default.html.

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In conclusion, ICCR commends the Commission's extensive work and strongly supports the Commission's Proposed Rule, as it will drive standardized disclosures and provide investors with decision-useful climate-related financial information. While we strongly support the Proposed Rule, we also urge the Commission to consider our suggestions above to strengthen the Proposed Rule, and provide investors with critically-needed information on climate risk to make informed investment decisions.

Thank you for the opportunity to comment. If you have any questions, please contact Christina Herman at [redacted].

Sincerely,

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